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Pennsylvania

Common School Law

—BY—

CHESTER C. BASHORE, LL. B.

Of the Cumberland County Bar

SONEY & SAGE
Newark, New Jersey
1906

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1906

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TO THE
TEACHERS, DIRECTORS AND PATRONS
—OF—
THE COMMON SCHOOLS
—OF THE—
STATE OF PENNSYLVANIA,
THIS BOOK IS RESPECTFULLY INSCRIBED

PREFACE

Within recent years the people of Pennsylvania have manifested a deep interest in the cause of education, and this work is presented with the hope that it may be of value to those who may desire more knowledge upon the subject.

As the common school law of Pennsylvania is purely statutory, it has been the plan of the author to give the Acts of Assembly bearing on a given subject, following said acts by the decision of the courts relating to them.

It is with much hesitancy that this work is submitted to the public, but if it serves as an aid to those investigating the subject, the author will feel amply justified in his labors.

The writer acknowledges his indebtedness to Arthur L. Reeser, LL. B., for his valuable assistance.

CHESTER C. BASHORE.

Carlisle, Pa., September 1, 1906.

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PART I.

Fourth Class School District.

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Creation of.

1. The public school system of this state is a creature of the state constitution and the laws passed pursuant to its directions.

Mr. Justice Brown says:—"By the constitution of 1790 the people of this commonwealth imposed upon the legislature the positive duty of establishing schools throughout the State for the free education of the poor. The constitutional provision was:—"The legislature shall, as soon as conveniently may be, provide, by law, for the establishment of schools throughout the state, in such manner that the poor may be taught gratis." In carrying out this mandatory direction, the act of March 3rd, 1818, P. L. 124, was passed, entitled "An act to provide for the education of children at public expense within the city and county of Philadelphia." With constantly increasing interest in the education of the young, the legislature, in reflecting public sentiment, from time to time provided for public schools,

created school districts, and, finally, by the act of May 8th, 1854, P. L. 617, established a system of common school education for all the counties of the commonwealth. What was first a constitutional requirement, that the legislature should establish schools for the education of the poor "gratis," in time became a universal demand for free education for all classes, and, for years, to thousands of the children of the rich as well as the poor, common schools have been the only colleges. By our present constitution the legislature is to provide for the education of all the children of the commonwealth through "a thorough and efficient system of public schools." A review of constitutional provisions and legislative enactments clearly shows that the state has regarded the education of its children as one of its duties and functions, the performance of which it has as yet delegated to no municipality. Though by the act of 1854 every township, borough and city of the commonwealth is made a separate school district, its affairs are not managed by the township or municipal authorities, but by boards of school directors or controllers elected for that purpose.¹

Every township, borough and city a school district.

2. A system of common school education be, and the same is hereby deemed, held and taken to be adopted, according to the provisions of this act, in all the counties of this Commonwealth; and every township, borough and city of this Commonwealth, or which shall hereafter be erected, shall constitute and be a school district, subject to the provisions of this act.²

Shall elect assessors.

3. All boroughs and townships now connected in the assessment of county rates and levies, shall hereafter be separate and independent of each other in the assessment of said rates and levies, and for school purposes; and the respective townships and boroughs so separated shall elect their own assessors and other officers, whose duty it shall be to

¹ Board of Public Education vs. Ransley, 209 Pa. 51, 1904.

² Act May 8th, 1854, sec. 1, P. L. 617.

exercise the same powers and authority as are now exercised by township assessors generally, and the discharge of their duties in relation to the assessment of county rates and levies.³

Consolidated districts. Powers of controllers.

4. School districts which are composed of cities or boroughs, divided into wards for school purposes, at the time of the passage of this act, shall be constituted as follows, to wit: each ward shall retain its school property, both real and personal, and elect a separate board of directors, who shall exercise in their respective limits all the powers and duties of school directors, as regards the erection or repairing of school houses, and the purchasing, renting or selling of school houses and lots, and shall also levy, assess, collect and disburse in and upon their respective wards, all taxes rendered necessary to the proper exercise of the foregoing powers; but all other powers and duties pertaining to school directors, which are conferred or enjoined by this act, shall be exercised in such city or borough by a board of controllers composed of the directors of the several wards, who are hereby authorized and required to perform all the duties belonging to boards of directors in single districts, with the exception contained in this section: provided, that whenever all the boards of directors in any such city or borough shall voluntarily execute deeds of conveyance to the board of controllers for all the school property belonging to their respective wards, and shall certify the same to the superintendent of common schools, then and in that case, such city or borough shall thereafter compose a single school district, in the same manner as districts not divided into wards—but the number of directors thereafter elected in such city or borough shall be three for each ward.⁴

Terms of directors elected. Courts may increase number to three for each ward.

5. When said report shall have been confirmed by the court, it shall at the same time decree the election of an

3 Act May 8th, 1855, sec. 10, P. L. 511.

4 Act May 8th, 1854, sec. 2, P. L. 617.

equal number of councilman and school directors in each of the wards, in such a manner as not to interfere with the terms of those heretofore elected. And the said court may, after having once fixed the number of councilmen and school directors, increase the same, on petition of citizens of any such borough, to any number not exceeding three for each ward, and at the next succeeding municipal election thereafter the number of councilmen and school directors, so as aforesaid fixed, shall be elected as is provided for by existing laws.⁵

Independent districts. Creation of.

6. Upon petition of not less than twenty taxable inhabitants of any township or townships, desiring the formation of a territory upon which they reside, into a separate and independent common school district, and setting forth the bounds of such proposed district, the court of quarter sessions of the proper county shall appoint commissioners to view the premises and report to the court, at its next term, the lines of the proposed new district, either according to the bounds set forth in the petition, or to such other bounds as they shall think more advisable, together with their opinion on the expediency of establishing or not establishing the same; the proceedings upon which petition commission and report, and the final disposition thereof shall, in all other respects, be according to the act of assembly now in force, relative to the erection of new townships: Provided, that if said proceedings result in the establishment of a new common school district, the cost of the commission and the office fees shall be paid by the said new district, but if otherwise, said costs and fees shall be paid by the petitioners themselves.⁶

When districts become independent.

Powers of new board.

7. When a new district shall hereafter be formed, such district shall not be considered and recognized as a separate

5 Act May 13th, 1889, sec. 1, P. L. 193.

6 Act May 8th, 1855, sec. 5, P. L. 509.

and independent school district, until after the termination of the current school year in which it became a new district, and until it have a full board of directors, regularly elected or appointed, and organized ; except that the directors thereof shall have authority to levy, assess and collect tax, procure school houses, and do all other acts necessary to the commencement of the schools for the ensuing year.⁷

Collection of taxes.

8. It is held that the township collector of taxes is, under the act June 25, 1885, to collect the school tax in an independent school district within the limits of the township.⁸

Against formation.

9. The policy of the law is against the formation of the district. Courts will not create them excepting where the necessity for it appears clearly and affirmatively from the facts in the case.⁹

How to abolish independent districts.

10. In all cases where an independent school district has been created it shall be lawful for the courts of quarter sessions of the county in which such independent district is located, upon application to said court of a majority of the taxable citizens resident within the limits of such independent school district, by petition, setting forth that they desire the abolition of said district, to hear and determine the application upon its merits ; and if deemed expedient, the said court shall discontinue the said independent district.¹⁰

Abolish whole district.

11. Judge Mestrezat said : "The application to abolish an independent district must be made to discontinue the whole and not a part of the district."¹¹

7. Act May 8th, 1854, sec. 3, P. L. 617.

8. *Bitting vs. Commonwealth*, 20 W. N. C. 178, 1887.

9. *School District Hatfield Township*, 43 Leg. Int. 277, 1885.

School District Marcy Township, 5 Kulp 64, 1888.

Independent School District, 5 Del. 16, 1892.

Watkins Township School District, 70 Pa. 110, 1871.

10. Act May 22, 1903, Sec. 1, P. L. 237.

11. *Lagrange Independent School District*, 7 D. R. 719, 1898.

Classification of school districts.

12. The school districts of the commonwealth of Pennsylvania are divided into four classes, as follows, namely :—

First class.

13. Every city of the first class shall constitute a separate school district, which shall be known and designated as a school district of the first class.

Second class.

14. Every city of the second class shall constitute a separate school district, which shall be known and designated as a school district of the second class.

Third class.

15. Every city of the third class shall constitute a separate school district, which shall be known and designated as a school district of the third class.

Fourth class.

16. Every other school district, as such school district now exists or shall hereafter be created, shall constitute a school district of the fourth class.¹²

Population of different classes of cities.**First class.**

17. Those containing a population of one million or over shall constitute the first class.

Second class.

18. Those containing a population of one hundred thousand and under one million, shall constitute the second class.

Third class.

19. Those containing a population under one hundred thousand, shall constitute the third class.¹³

12. Act April 22nd, 1905. P. L. 272.

13. Act June 25th, 1895, Sec. 1, P. L. 275.

CHAPTER II.

CHANGES IN SCHOOL DISTRICTS.

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When alteration or abolition takes place.

20. When a portion of a common school district is detached therefrom, by the alteration of township or borough lines, or when an independent school district is abolished, such alteration, or abolition, shall not take effect, for school purposes, till the commencement of the school year, next after the end of that in which it shall have been decreed and

confirmed, and the directors in the detached portion, or in the abolished district, as the case may be, shall continue to exercise their office until the end of the year in which said alteration, or abolition occurred; and that the school real estate and movable property within any detached portions of districts, or abolished districts, shall pass, with the territory on which they are situated, to the district or districts to which such territory becomes detached, or reverts, with like right in the directors thereof to use or sell the same, as the proper directors had before the alteration or abolition; and if any money be on hand, or debt unpaid, or any tax, or other claims, be uncollected, after the settlement of all accounts of the current year, the proper court shall divide said money, or debt, amongst the districts thus acquiring territory, in such proportions, and shall make such order as to uncollected tax, or other claims, due by said abolished district to any person or persons, as shall be just; and any sum thus decreed to be due by any district or individual, shall be entered, in the nature of a judgment, against the same, and shall be subject to execution, in the manner prescribed by the twenty-first section of the general common school law of the eighth day of May, one thousand eight hundred and fifty-four.¹

Apportionment of existing debt.

21. Under this act there is no provision which gives the school district of a township a right to demand compensation from a borough school district for real estate situated in a portion of the township annexed to the borough. All that the school district of the township can demand of the school district of the borough, is that any existing debt of the former shall be apportioned between the two districts.²

Cutting borough out of township.

22. Every township and borough is a school district, without respect to acre, population or wealth. When a borough is formed of part of a township, it thereupon becomes a distinct district, while the residue of the township remains

1. Act April 11, 1862, sec. 10 P. L. 473.

2. Watkins Township School District, 18 Pa. Superior Ct., 293, 1901.

a district as before. The law has no provision by which the summary abolition of an old district results from the creation of a new one out of part of its territory, and provides no test for determining whether the old one is left capable of the necessary functions of a school district.³

Distinct municipal corporation.

23. Boroughs are distinct municipal corporations from townships. This is recognized in all the statutes of our state. By the act of April 3, 1859, it is provided that any borough incorporated from within a township shall be distinct and separate therefrom. The same act provides for the election of school directors. By the act of May 8th, 1854, it is provided that every borough erected after the passage of that act shall constitute a school district subject to the provisions of that act.

By these acts it is clearly indicated that the formation of boroughs within townships make them an entirely separate and distinct class of municipal corporations from townships and makes them subject to a different class of laws known as borough laws. When boroughs are so constituted they are no longer controlled and regulated by the laws relating to those townships but are governed by the statutes regulating boroughs and all local legislation conflicting with the acts of assembly to boroughs must give way.⁴

Board of health.

24. The school board of a township out of which a borough has been formed will not be required to act as a board of health for the territory occupied by the new borough during the remainder of the year.⁵

When cutting boroughs out of townships does not create new school district.

25. Whenever a borough has been or shall be erected out of a portion of a township, leaving the remaining portion

3. Old Forge School District's Indebtedness, 22 Pa. Superior Ct. 239 1903.

4. Commonwealth vs. School Directors, 8 Pa. Superior Ct. 257, 1898.

5. Commonwealth vs. School Directors, 51 P. L. J. 374, 1904.

of a township without a school house, and with less than ten resident freeholders, and less than twenty-five resident children between the ages of six and sixteen years; then, and in such case, the creation of such borough shall not cause a division of the school district of the township out of which such borough was formed; but the school district, as it existed in such township before creation of such borough shall be and remain as theretofore: provided, however, that whenever it shall be made to appear to the court of common pleas of the proper county, by petition of at least twenty freeholders of such undivided school district, and proper hearing, that the portion of such school district outside the borough has at least ten resident freeholders and twenty-five children, as aforesaid; then the said court, in its discretion, may decree that said school district shall be divided into two districts, one consisting of the territory within such borough, and the other to consist of the part of the original township territory not included within such borough lines.⁶

Division of property upon formation of new district.

26. When a school district is formed, the court establishing the same shall determine, on hearing, whether an undue proportion of the real estate and school houses, belonging to the old district or districts are within the bounds of the new district, and if so, how much money shall be paid therefor by the new to the old district or districts, and if any money be on hand, or debt unpaid, or any tax, or other claims, be uncollected after settlement of all accounts of the current year, the proper court shall divide said money, or debt, amongst the districts, in such proportions, and shall make such order as to uncollected tax, or other claims, as shall be just; and any sum thus decreed to be due by any district, to any district or individual, shall be entered, in the nature of a judgment against the same, and shall be subject to execution in the manner prescribed by the twenty-first section of the general common school law

6. Act February 5, 1903, sec. 1, P. L. 4.

of the eighth of May, one thousand eight hundred and fifty-four.⁷

Act of 1862 is a remedial law.

27. The act of 1862 is a remedial law. Its object was to provide for an equitable division of the school property, not according to the needs of the respective districts, but in such a way as to justly distribute the burden of taxation.⁸

Division of property.

28. When a new school district is formed, the court shall determine whether an undue porportion of the real estate and school houses, belonging to the old district, is within the bounds of the new, and, if so, how much should be paid by the new to the old district, means an undue proportion, not of school facilities, but of value. The best method of apportionment seems to be to determine what share of the total value is due to the contributions of each district, and whether, tried by this test, the new district has more realty than its own contribution entitles it to claim. As the contribution of each district is raised by taxation, the apportionment should be according to taxable value. The same method should be followed in dividing the money on hand and the debts. Interest on debts should be divided from the date of incorporation of the new district. But interest on the money in hand and upon the undue proportion of the realty, where a dispute exists, should not begin until a time has elapsed long enough to allow an appeal to the court to be carried through.⁹

Division of state appropriation.

29. The part of the state appropriation is to be divided according to the ratio of taxables.¹⁰

Division of property upon the enlargement of school districts.

30. Whenever, heretofore, a common school district has been, or hereafter shall be, enlarged by the annexation of a

7. Act April 11, 1862, sec. 11, P. L. 474.

8. In Re School Dist. of Luzerne Borough, 3 Kulp 162, 1884

9. Williams Township vs. Williamstown, 9 Pa. C. C. 65, 1890.

10. In Re School Dist. of Luzerne Borough, 3 Kulp 162, 1884.

part or parts of a township, or townships, the court of quarter sessions of the proper county shall determine, on hearing, whether an undue proportion of the real estate and school houses belonging to the old district or districts, is within the bounds of such enlarged district, and if so, how much money shall be paid therefor by such enlarged district to the old district or districts; and if any money be on hand, or debt unpaid, or any tax or other claims be uncollected, after the settlement of all such accounts prior thereto, the said court shall divide said money or debt amongst the districts, in such proportions—and shall make such order as to uncollected tax or other claims—as shall be just; and any sum, thus decreed to be due by any district to any district or individual, shall be entered in the nature of a judgment against the same, and shall be subject to execution, in the manner prescribed in the twenty-first section of the general common school law, on the eighth of May, one thousand eight hundred and fifty-four.¹¹

Annexation of land.

31. The several courts of quarter sessions of this Commonwealth shall have authority, within their respective counties to annex land, or parts thereof, of persons resident in one township or borough of another township, borough, or to a city containing not more than ten thousand inhabitants for school purposes, so that when so annexed the applicant shall pay his school tax and be included within the school district to which it is so annexed for educational purposes, and remain connected with the district, or township, or borough of his residence for all other purposes; and the said court shall, upon the petition of any one desiring such change, proceed by views and reviews, in the manner and under the restrictions provided under the act of the general assembly, approved April fifteenth, one thousand eight hundred and thirty-four, with its supplements, in regard to the alterations of the lines of any two or more adjoining townships. Provided, that all the costs of such proceedings shall be paid by the person or persons

11. Act April 3, 1903, sec. 1, P. L. 142

applying for such change: And provided further, that the transfer of lands, or parts thereof, of residents of a township or borough, to any such city for school purposes, shall only be by and with the consent of the board of school directors of both districts: And provided further, that this act shall not affect any case now pending in any of the courts of this Commonwealth.¹²

Purpose of act.

32. This act does not authorize the annexation of land which does not adjoin the school district to which it is annexed.¹³

Contents of petition.

33. Where the petition fails to set forth that the land proposed to be annexed adjoins the township or borough to which it is desired to annex it, the petition is fatally defective.¹⁴

Report of viewers.

34. The report of the viewers must be filed at the next regular term of the quarter sessions. Upon failure to do so an order cannot be made to file it *nunc pro tunc*.¹⁵

When court may set aside decree.

35. Whenever, by proceedings in any court of quarter sessions of this Commonwealth, the land, or parts thereof, of persons, resident in one township or borough, has been or hereafter may be annexed to another township or borough, for school purposes, the said court may, at any time thereafter, upon application of one-third of the taxable citizens of the township or borough in which said land is situated, by petition setting forth that they desire the decree of the court, whereby the said land was so annexed, to be annulled and set aside, proceed to hear said application, and, if the court deem expedient, may annul and set aside said decree.¹⁶

12. Act of April 17, 1876, P. L. 38.

amending Act of April 15, 1867.

13. Heidler's Petition, 122 Pa. 653, 1888.

14. In Re Wolf's Petition, 8 Kulp, 181, 1896.

15. Mt. Pleasant School District, 20 Pa. C. C. 60, 1898.

16. Act June 8, 1881, Sec. 1, P. L. 69.

Proper proceedings.

36. It is held that proceedings for the detachment of lands theretofore annexed to a school district must be either under this act or the act of June 2, 1891, P. L. 172, and not by appointment of viewers under the act of April, 17, 1876, P. L. 38.¹⁷

Territory becomes part of new district.

37. Whenever territory adjacent and adjoining any city of the third class comprising one school district has been or shall hereafter be annexed to and made part of any such city of the third class, that the territory or district so annexed shall constitute and form a part of the school district of said city.¹⁸

Merger of township. Rights and liabilities.

38. Whenever any township has been or may hereafter be entirely merged into more than one borough, and the township shall thereby have ceased to exist, and the school district of the township become merged into the school district of the boroughs erected out of said township, the rights and liabilities of said township shall devolve in just proportion upon the school districts of the said several boroughs, but the school district of no such borough shall be entitled or liable as aforesaid, except as to such rights and liabilities as existed at the end of the current school year in which it became a new district, and the proportion of each new district as aforesaid shall be ascertained in like manner as prescribed in the first section of this act; and in all actions pending by or against the school district of said township, the school district or districts of the borough or boroughs entitled or liable as aforesaid, shall, by rule of court, be substituted instead of the school district of said township, and in actions thereafter brought on matters in behalf of or against the school district of said township, the school district or districts of the borough or boroughs entitled or liable as aforesaid shall be the proper parties to prosecute or defend the same as the case may be.¹⁹

17. Newry School District, 11 Pa. Superior Ct. 592, 1899.

18. Act June 24, 1895, Sec. 1, P. L. 239.

19. Act June 24, 1895, Sec. 2, P. L. 260.

Certification of new districts.

39. The clerks of the courts of quarter sessions of the several counties of this Commonwealth, shall forward to the superintendent of common schools a certified copy, under seal, of the decree of said court of their respective counties, creating any new school district, whether it be formed by the incorporation of a borough, the creation of a new township, or the formation of an independent district, said certificate to be forwarded within thirty days after the entry of such decree; the costs for such certificate shall be a legal charge against the new district thus formed.²⁰

Tax cannot be levied while proceedings are pending.

40. Whilst proceedings are pending in any court of this Commonwealth for the division of any township or school district, or for the erection of any borough, it shall not be lawful for the school directors of the township or district proposed to be divided, or out of which such borough is proposed to be erected, to levy, assess or collect any tax whatever for the purchase of ground or for school building purposes, except where the same shall be necessary to rebuild a school house accidentally injured or destroyed, or to pay a building debt previously incurred.²¹

Duty of commissioners.

41. Whenever any new district shall be formed in any county of this Commonwealth, it shall be the duty of the commissioners thereof to certify to the superintendent of common schools, before the commencement of the next succeeding school year, the number of taxable inhabitants therein, and also the number in the district or districts from which it was taken, separately, according to the last preceding triennial enumeration of taxables made for school purposes, so that the whole number in such new district, and in that or those out of which it was taken, being added together, shall be neither greater nor less than the number that was therein before the change was made, and accord-

20. Act April 17, 1865. See 1, P. L. 62.

21. Act June 13 1874, Sec. 1, P. L. 284.

ing to the last triennial certificate or return of taxables thereof made by said commissioners.²²

Borough school districts shall share in rights and liabilities of townships from which formed. How proportionate share of each shall be ascertained.

42. Every school district which has been or may hereafter be formed by the erection of a borough out of any township or parts of adjoining townships shall share in just proportion, in the rights and liabilities of the school district or districts of said township or townships existing at the time of the incorporation of such borough, the proportion of such new school district to be ascertained by reference to the assessment of said township or townships for the year in which such borough was incorporated, and in all pending actions by or against the school district or districts of said township or townships, and in all actions thereafter brought by or against the same, the new school district or districts liable or entitled as aforesaid shall, by rule of court, be made co-parties plaintiff or defendant as the case may be.²³

Constitution.

43. This act does not conflict with Article III, Sec. 3, of the constitution.²⁴

Due compensation.

44. When a borough by its incorporation secures more than its due share of the public school property, it will have to make due compensation to the township and will also have to bear its due share of the public indebtedness.²⁵

Court shall adjust and apportion indebtedness.

45. Whenever any school district has been or may hereafter be formed as aforesaid, or whenever any school district has been or may hereafter be entirely merged into more than one school district as aforesaid, any court of

22. Act May 18, 1854, Sec. 49, P. L. 629.

23. Act June 24, 1895, Sec. 1, P. L. 259.

24. Parker Township Sch. Dist. vs. Bruin Borough Sch. Dist. 13 D. R. 769, 1903.

25. Smithfield Borough, 23 Pa. C. C. 583, 1900.

common pleas of the proper county, sitting in equity, shall have power, upon the application of any one or more creditors of the school district or districts, of said township or townships, or upon the application of the proper authorities of the school district or districts of any said township or townships, borough or boroughs, or either of them, by a suit or suits in equity, to ascertain the indebtedness of the school district or districts of said township or townships at the time of the formation of each of the school districts of said boroughs respectively, and to equitably adjust and apportion said indebtedness between the school district or districts of said township or townships, and borough or boroughs, and between the several school districts of the boroughs into which any township shall have become merged, as aforesaid, and where any school, real estate and movable property belonging to the school district or districts of said township or townships are or shall be within the bounds of any such new district. The said court shall further determine, on hearing, whether an undue proportion of the real estate and movable property belonging to the old district or districts are within the bounds of the new district and, if so, how much money shall be paid therefor by the new to the old district or districts, and the court shall thereupon decree the proportion of said indebtedness which each of said school districts shall pay and the amount of money, if any, which the new district shall pay to the old district or districts for any undue proportion of the school property within the bounds of such new district. In making said adjustment as applied to each of said new school districts reference shall be had to the time of the formation of such new school district and to the debts existing at the end of the current school year in which it was formed, whether since paid or not, and also to the several amounts of school taxes then unexpended and the said adjustment shall be based upon the assessment of said township or townships for the year in which such new district was formed: Provided, That in ascertaining said indebtedness, neither pending actions nor claims against the school district or districts of said township or

townships founded on tort, shall be included, unless the same shall in the meantime have been prosecuted to final judgment.²⁶

Trial by jury.

46. This act does not conflict with Article 1, Sec. 6, of the constitution, which preserves the right of trial by jury.²⁷

No authority in new district.

47. No authority is conferred by this act to decree a balance due to the new district for an undue proportion of realty and movable property remaining in the old district.²⁸

Notice to persons having claims against the district.

48. Three months public notice shall be given under the order of said court to all persons having claims against the school district or districts of said township or townships, excepting claims in pending actions and claims founded on tort, as aforesaid, to present the same on or before the day therein named, and all persons not presenting their said claims on or before the said day shall be forever debarred from enforcing collection of the same, said notice to be published in not less than two newspapers of the proper county, if there are so many printed in said county, or if there be but one newspaper printed therein, then said notice shall be printed in the same and shall be published in any other manner directed by the said court: Provided, however, That no owner or holder of any bond or bonds of any such school district shall, for any failure to present or make proof of the same as aforesaid, be precluded or debarred thereby from enforcing collection of the same.²⁹

Rules for collection and payment.

49. The said court shall have power to make all needful rules, orders and decrees in the premises, and for the collection and payment by the school district or districts of said township or townships, borough or boroughs of the share of said indebtedness, respectively, apportioned to them.

26. Act June 24, 1895, Sec. 3, P. L. 260.

27. Parker Twp. Sch. Dist. v. Bruin Boro. Sch. Dist. 13 D. R. 769, 1903.

28. Munhall Borough School District, 207 Pa. 638, 1904.

29. Act June 24, 1895, Sec. 4, P. L. 261.

and of any sum of money decreed to be paid by any such new district to the school district of any township from which it was formed for any undue proportion of school property within the bounds of such new district, and may order the proper officers of the school district or districts of any said township or townships, borough or boroughs, or of either of them, to collect, by special taxation, an amount sufficient to pay the same, either in any one year or by annual installments, as to the court shall appear just and reasonable.³⁰

Court may appoint receiver. Duty of receiver.

50. The said court shall have power, in its discretion, to appoint a receiver to whom the money due on account of indebtedness from each school district for the purpose aforesaid shall be paid, and it shall be his duty to pay over the amount so received by him to the holders of said indebtedness in such order or in such proportions as the court shall direct, and in case of any special taxation in any said school district, or in all of them, being ordered for or on account of any indebtedness as aforesaid, the collector of said special tax shall pay the same directly to said receiver.³¹

How indebtedness shall be credited. How balance shall be credited.

51. The school district of each borough, in any of the cases aforesaid, shall be credited with the proper share of such indebtedness, due to the school district or districts of said township or townships, at the time of the formation of such borough district, as shall have since been collected, and shall likewise be credited with its proper share of any unappropriated balance in the treasury of the school district or districts of said township or townships at the end of the current school year during which such borough district shall have been formed, and the said court shall have like power to equitably adjust and apportion the same.³²

30. Act June 24, 1895, Sec. 5, P. L. 261.

31. Act June 24, 1895, Sec. 6, P. L. 262.

32. Act June 24, 1895, Sec. 7, P. L. 262.

Enforcement of orders and decrees.

52. The costs of said proceedings shall be paid by the school districts of the said several townships and boroughs in such proportions as the said court shall adjudge, and the orders and decrees of the said court in such proceedings may be enforced by attachment.³³

When township is merged into one borough.

53. Whenever any township has been or shall hereafter be changed or merged into one borough the school district of said borough shall succeed to all the rights and liabilities of the school district of said township, and in all the actions pending by or against the school district of said township the school district of said borough shall be substituted as party instead of the school district of said township, and in all actions thereafter brought for matters in behalf of or against the school district of said township the school district of the said borough shall be the party plaintiff or defendant, as the case may be, instead of the school district of said township.³⁴

54. Nothing in this act contained shall be held or construed to supersede or repeal the provisions of any existing act of assembly applicable to the same subject matter.³⁵

33. Act June 24, 1895, Sec. 8, P. L. 262.

34. Act June 24, 1895, Sec. 9, P. L. 262.

35. Act June 24, 1895, Sec. 10, P. L. 262.

CHAPTER III.

POWERS AND LIABILITIES OF SCHOOL DISTRICTS.

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May sue and be sued.

55. The several school districts within this Commonwealth shall have capacity as bodies corporate :

I. To sue and be sued as such, by the corporate name of the school district of _____.

To purchase or sell real estate.

56. II.—To purchase and hold such real and personal property as may be necessary for the establishment and support of the schools, and the same to sell, alien, and dispose of, when it shall no longer be necessary for the purposes aforesaid, and also, whenever the board of directors or controllers, in cases where school property has been conveyed to them, shall deem it expedient to make sale of the said real estate, for the purpose of reinvesting the proceeds thereof for school purposes.¹

1. Act May 8, 1854, Sec. 18, P. L. 620.

Directors shall have no interest in property purchased.

57. School directors interested in a piece of property, may, at the suit of a taxpayer, be enjoined from voting in favor of its purchase by the district; and this though the purchase is being made in good faith and at a fair price.²

Real estate held in trust.

58. In cases where real estate is held by trustees, or others, for the general use of a neighborhood—for a school house or its appendages—and when the same shall cease to be required, it shall be lawful for the said trustees, or others, their survivor or survivors, or successors, to convey the same to the proper district, which shall be thereafter held by said district, for the same term and for the same uses for which it was originally granted to said trustees or others. But should the said trustees, from indisposition on the part of the proper board of school directors of the district, to accept of said conveyance, or from other causes, find it impossible to release themselves from said trust, they, or a majority of them, may apply to the court of common pleas of the proper county, praying said court to authorize and direct the afore-said trustee, trustees or other persons, to make sale of the same, having first given two weeks' previous notice, in one or more of the public prints of said county, of the time and place of said sales; and shall make return of proceeds of sale to said court, that the same may, by the direction of said court, be added to the funds of the proper school district; whereupon the said trustee, trustees or other persons, shall be discharged from all responsibility in the premises.³

Conveyance of real estate to school district by surviving trustees.

59. In all cases where real estate has been or is held by the trustees, for the general use of the neighborhood as a school house or its appendages, and the same has been or shall be conveyed to the school district by the surviving trustees, such conveyance shall be as valid to pass the legal estate in the premises to such school district as if executed

2. Witmer's Appeal, 15 Atlan. 428, 1888.

3. Act May 8, 1854, Sec. 18, P. L. 617.

by all of them, pursuant to the fourteenth section of the act of the thirteenth of June, 1836.⁴

Deeds, how executed.

60. All deeds and other contracts in writing, made by a school district, shall be signed and sealed by the president of the board of directors or controllers, and countersigned by the secretary.⁵

Suits by and against school districts.

61. All suits by a school district shall be brought in its corporate name, and be conducted and managed by the board of directors or controllers, as the case may be; and all suits against such district shall style the same by its corporate name, and all legal process, other than writs to enforce payment of a judgment, shall be served on either the president or secretary of the board of directors or controllers, as the case may be.⁶

How summons must be made.

62. The act of May 8th, 1854, provides that all suits against a school district shall style the same by its corporate name, and all legal process other than suits to enforce payment of a judgment, shall be served on either the president or secretary of the board of directors. It must be served personally on the officer. It cannot be served on its officers by leaving a copy at his house with an adult member of the family.⁷

Negligence

63. School districts are quasi corporations having limited powers for carrying out the common school system within its limits, and cannot be held in the same measure to accountability for the wrongful acts and negligence of its officers, servants or agents, as a private corporation; hence is not liable for injuries sustained by those attending its schools.⁸

4. Act May 8, 1854, Sec. 23, P. L. 622.

5. Act May 8, 1854, Sec. 19, P. L. 621.

6. Act May 8, 1854, Sec. 20, P. L. 621.

7. Flood vs. Masey School District, 9 Kulp, 385, 1899.

8. Ford vs. School District, 121 Pa. 543, 1888.

Statutory power of officers.

64. Mr. Justice Trunkey said : "A person is not liable for the acts of another unless the relation of master and servant or principal and agent exists between them. School districts are corporations of lower grade and less power than a city, having less the characteristics of private corporations and more of a mere agent of the state. They are territorial divisions for the purposes of the common school laws and their officers have no powers except by express statutory grant and necessary implication ; and these are for the establishment and maintainance of the public schools. The common school system partakes much of the nature of a public charity, extends over the whole state, is sustained by the public moneys, and the directors, who devote much time and labor for the public benefit, receive no compensation for their services. Unless exempted by the act of incorporation, or by law, a private corporation is liable for the wrongful acts and neglects of its officers done in the course and within the scope of their employment, the same as a natural person is for the acts and neglects of his servant or agent. A less stringent rule applies to public corporations, and least stringent of all should be applied to school districts, whose officers have limited and defined powers in a system exclusively for the free education of the children in the commonwealth.

The directors as a board must exercise their powers—the board may make contracts, may authorize a committee to make a contract, and may appoint an agent for a proper and specific purpose. One or more of the directors, without authority from the board, can make no contract binding upon the district, cannot change a contract, can do no act fixing the district for a liability. He may be personally responsible to those who suffer from his unauthorized acts, as any other citizen would be."

Execution against school districts.

65. If judgment shall be obtained against a school district, in any action of proceeding, the party entitled

9. School District of the City of Erie vs. Fuess, 98 Pa. 600, 1881.

to the benefit of such judgment may have execution thereof, as follows, and not otherwise, to wit:—it shall be lawful for the court in which such judgment shall be obtained, or to which such judgment shall be removed by transcript, from a justice of the peace or alderman, to issue thereon a writ, commanding the directors or controllers and treasurer of such school district, to cause the amount thereof, with interest and cost, to be paid to the party entitled to the benefit of such judgment, out of any moneys unappropriated of such district, or, if there be no such moneys, out of the first moneys that shall be received for the use of such district, and to enforce obedience to such writ by attachment.¹⁰

Remedy.

66. The remedy provided by this act is exclusive, and proceedings by an ordinary mandamus cannot be sustained.¹¹

Special writ on execution.

67. The writ provided by this section is not an alternative mandamus, but a special writ of execution, directed against the money of the defendant, and enforceable by attachment against the school directors of the district, if it is not obeyed.¹²

Return.

68. A return of "no funds" is sufficient; it need not state why such a state of things exist.¹³

When attachment is premature.

69. Until a peremptory writ of mandamus has been awarded and disobeyed an application for an attachment against the school directors for failing to pay a judgment as commanded by mandate or alternative mandamus, is premature.¹⁴

Execution on judgment.

70. Judge Clayton said: "That where an execution having been issued upon a decree from which there has

10. Act May 8, 1854, Sec. 21, P. L. 621.

11. Commonwealth vs. Pease, 1 Dauphin Co. 47, 1898.

12. O'Donnell vs. School District, 133 Pa. 162, 1890.

13. Cavanaugh vs. Cass School District 6 Pa. C. C. 35, 1889.

14. School District vs. School District, 6 Pa. C. C. 38, 1889.

been no appeal, the only defence allowable is the want of funds, in which case the court will order a special tax to pay the debt."¹⁵

Evidence for school district.

71. That no person shall hereafter be incompetent to give evidence in any suit or action in which any school district, or any officer thereof is a party, for or on account of said person being an inhabitant of the district, or by reason of his being liable to the payment of any tax in which said school district may be interested.¹⁶

Procedure on a judgment rendered by a justice of the peace or alderman against a school district.

72. It shall be the duty of the plaintiff or plaintiffs in every judgment rendered by a justice of the peace or alderman of this Commonwealth, against any borough, township or school district of this Commonwealth, to file, within one week from the time of rendition of said judgment, with the prothonotary of the county in which such municipal corporation is situated, a certificate signed by the plaintiff or plaintiffs, naming the parties to the action in which said judgment was rendered, the magistrate by whom rendered, and setting forth the fact and date of the rendition of the same and the amount thereof.¹⁷

Record of certificate.

73. Immediately upon the receipt of such certificate by the prothonotary of such county, he shall enter it of record in a book, kept by him in his office for that purpose, to be called the "Record of Suits before Justices and Aldermen against Boroughs, Townships and School Districts," setting forth therein the name of the plaintiff, the name of the defendant municipality, the sum for which judgment was entered, the date of its rendition, and the name of the justice or alderman by whom the judgment was given.¹⁸

15. School District vs. School District, 4 Del. 97, 1889.

16. Act May 8, 1854, Sec. 51, P. L. 629.

17. Act April 22, 1905, Sec. 1, P. L. 296.

18. Act April 22, 1905, Sec. 2, P. L. 296.

Fee.

74. For entering such certificate of record, the prothonotary shall receive the sum of fifty cents, for which, in every instance, the municipality against which the suit is brought shall be liable to the prothonotary.¹⁹

Failure to comply with the act. Records and transcripts.

75. Whenever in the case of any judgment rendered by any justice of the peace or alderman of this Commonwealth, against any borough, township or school district of this Commonwealth, the provisions of this act shall not be complied with, no transcript of such judgment may, at any subsequent time, be filed in the office of the prothonotary, for any purpose whatsoever; and neither the justice's nor alderman's record of such judgment, nor any transcript or copy thereof, may be used as evidence in any proceedings to enforce or collect said judgment.²⁰

19. Act April 22, 1905, Sec. 3, P. L. 297.

20. Act April 22, 1905, Sec. 4, P. L. 297.

CHAPTER IV.

ELECTION OF DIRECTORS; FILLING OF VACANCIES.

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Creation of school boards.

76. Junkin J. says: "Boards of school directors are the creation of statutory law, having no existence outside of positive enactment. Neither have they any power beyond what the statutes confer, or by necessary implication spring from the duties imposed. The things which they are empowered to do, they may perform; and that which they

are not empowered to do, they must leave undone. They have no legislative powers; are not strictly speaking, a municipal corporation. They are a special statutory tribunal; and it is a postulate long recognized, that such bodies can exercise only such powers as are expressly confined."¹

Not municipal officers.

77. School directors are by no means municipal officers. They are not invested with any of the municipal powers, nor are they charged with the performance of municipal functions.²

Election of school directors. Term of office.

78. The school directors shall be elected annually in each district of the state, in the following manner, to wit: at the same time and place that elections are held for supervisors and constables, and, in wards in cities or boroughs, at the time and place of the borough or ward elections, and in like manner, two qualified citizens shall be elected school directors in each district, whose term of office shall be three years; but in districts where directors have not been elected, or in new districts which may be established by the erection of a new ward, borough or township, six directors shall be elected in such district, at the first election, two to serve one year, two to serve two years, and two to serve three years, and two annually thereafter; and in city and borough districts, allowed to elect three directors, the whole number for each ward shall be chosen at the first annual election after the passage of this act, one to serve for one year, one to serve for two years, one to serve for three years, and one annually thereafter.³

Petition. Increase of number of directors.

79. Provided, however, That upon the petition of the councils of any city subject to the provisions of this act, the court of common pleas of the county in which said city

1. Hamilton vs. Kill, 8 Luzerne Legal Register 108.

2. Chalfant vs. Edwards, 173 Pa. 246, 1896.

3. Act May 4, 1905, P. L. 388.

is located may, after a hearing duly had, enter a decree increasing the members of school directors in said city, so that there shall be three directors in each ward of said city.⁴

Vacancies. Term.

80. Any vacancies in the board of directors, caused thereby, shall be filled by the citizens of said wards, respectively, at the ensuing election held for the purpose of electing ward officers; and the said court shall also, at the same time, decree that at said election one-third of said school directors shall be elected to serve for one year, one-third for two years, and the remaining third to serve for three years, and that annually thereafter each school director shall be elected to serve for three years; and the said court shall also indicate the wards which shall elect for the shorter and longer terms; and in case after the entering of said decree, and before said election, there shall from this or any other cause be no one capable of exercising the said office of school director in the said school district, or vacancies shall be caused in the board by reason of the aforesaid increase, the said court of common pleas shall, upon petition of any one in interest, appoint suitable persons to act in the interim.⁵

Election of school directors in boroughs not divided into wards.

81. The number of members of any school board of boroughs not divided into wards shall be six.⁶

Election of school directors in boroughs not divided into wards.

82. It shall be lawful for the qualified voters of the boroughs of this Commonwealth which are not divided into wards, and boroughs not now enjoying this right by special statutes, at the first election for borough officers next ensuing the passage of this act, to elect two school directors to serve for one year, two to serve for two years, and two to serve for three years; and annually thereafter to elect, for a term of three years' duration, as many school directors as may be necessary to fill the places of those whose terms of office are about to expire.⁷

4. Act May 4, 1905, P. L. 388.

5. Act May 4, 1905, P. L. 388.

6. Act April 23, 1903, Sec. 1, P. L. 271.

7. Act April 23, 1903 Section 2, P. L. 271.

Designation on ballot.

83. At the first election for borough officers next ensuing the passage of this act, the qualified voters shall designate on their ballots for what length of time the persons thereon named shall serve, whether for one, two or three years.⁸

Vacancies.

84. The members of any board of school directors shall have power to fill any vacancy which may occur therein by death, resignation, removal from the borough or otherwise, until the next annual election for school directors, when such vacancy shall be filled by electing a qualified citizen to supply the same for the balance of the unexpired term; Provided, That the qualified voters shall designate on their ballots that the person or persons thereon named are voted for to fill an unexpired term.⁹

Directors elected under former laws.

85. The school directors now in office, under existing laws, shall act conjointly with those who are to be elected under the provisions hereof at the first election for borough officers next ensuing after the passage of this act, and act until the expiration of the term of said school directors now in office; but after their places have become vacant, either by the lapse of time or otherwise, their places shall not again be filled, and the office shall henceforth be at an end.¹⁰

Appointment by the court.

86. After the passage of this act, it shall be the duty of the judges of the courts of quarter sessions of the several counties to fill the offices created by this act, by the appointment of proper persons residing in the said boroughs, and the persons so appointed shall hold office until their successors are chosen at the next election of borough officers.¹¹

8. Act April 23, 1903, Sec. 3, P. L. 271.

9. Act April 23, 1903, Sec. 4, P. L. 272.

10. Act April 23, 1903, Sec. 5, P. L. 272.

11. Act April 23, 1903, Sec. 6, P. L. 272.

Borough school directors.

Application of Act April 23, 1903, P. L. 271.

Deputy Attorney General Fleitz said, *inter alia*:

87. "The language of this act, while somewhat ambiguous, is not capable of more than one construction, particularly when viewed in the light of the prior legislation upon the same subject. It is entitled 'An Act to designate the number of school directors to be elected in the several boroughs of the commonwealth not divided into wards, to provide for their election, and for the filling of vacancies, and to fix the length of term for which they shall serve.'

"The act further provides that at the first election held under its terms in the boroughs to which it applies six school directors shall be elected by the voters who shall designate on their ballots for which length of time the persons named shall serve, whether for one, two or three years. In a subsequent section it provides that 'the school directors now in office, under existing laws, shall act conjointly with those who are to be elected under the provisions hereof' until the expiration of the terms of the former.

"This act is manifestly an effort to bring within the terms of the general law some borough or boroughs not before entitled to elect six directors, and has no application whatever to any borough not divided into wards, which at the time of the passage of the act was entitled to have that number of directors. 'The language of section 2, 'Not now enjoying this right by special statute,' refers plainly to the right of electing six directors, but its ambiguous character seems to have been misunderstood in some sections of the commonwealth, and several boroughs which do not come within its terms proceeded to elect six directors at the last municipal election and now have more than their legal quota of those officials.

"After a careful investigation of the laws which were in force prior to the enactment of this statute, as well as of the causes which led to its adoption, I am of the opinion, and instruct you, that no borough entitled to elect six directors, and enjoying that privilege at the time of the passage of this act, comes within its provisions, and any

election held in any such borough in accordance with the terms of this statute is invalid, and of the six directors so elected only the two whose terms were designated as for three years are entitled to sit on the board or to take a part in its proceedings."¹²

Election of directors in independent districts.

88. When an independent school district shall be established, the proper court shall, in the decree therefor, designate the time and place for holding the annual elections of directors therein, and appoint two persons to hold the first election, at a time appointed therefor, who shall give ten days' notice thereof, by printed or written handbills, put up at not less than six public places within said district; at which first election, six directors shall be chosen, two for three years, two for two years, and two for one year, then next ensuing; and thereafter two directors shall be chosen for three years, at the annual election to be called and held by the president and secretary of the board, at the time and place, and in the manner, in said decree therefor appointed, said election, in all other respects, to be conducted in conformity with the existing school law. And in independent districts, established, or hereafter to be established, by the legislature, without specifying the mode, time or place, of electing directors, the first election shall be held at such time and place, within the proper district, as shall be specified by written or printed notices thereof, put up at not less than ten public places therein, signed by not less than five taxable citizens thereof, and giving ten full days' notice of such election, and subsequent elections shall be held at such time and place, annually, as shall be designated by similar notices, signed by the president and secretary of the proper board; said elections, in all other respects, to be held and conducted in the manner in this section before provided.¹³

Election of directors for different terms. Use of "stickers."

89. Where officers for the same office are to be chosen for different terms, the ballots must specify the terms for

12. Borough School Directors, 29 Pa. C. C. 468, 1904.

13. Act April 11, 1862, Sec. 9, P. L. 473.

each person for whom they are cast. In an election in which four school directors were to be elected in a ward, two for the term of three years, one for two years and one for one year, the "stickers" on certain tickets did not specify the term for which the candidate was voted for, nor did they by their position on the ticket designate the same. Held, they could not be counted. The use of "stickers" is permitted and election officers have no authority to remove them.¹⁴

Returns of election, how made.

90. The duplicate returns of all elections for directors shall be made out, signed and sealed by the judges, and delivered by the constable or proper officer of said election, one to the board of directors, and the other to the court of quarter sessions of the county, within ten days thereafter: and each person elected a director shall be notified thereof in writing, within five days after the election, by the constable or proper officer, who held the election.¹⁵

Contested elections, how decided.

91. If the legality of any election for directors is contested, it is necessary to proceed under act of May 19, 1874, P. L. 208, which was held to repeal by necessary implication the act of May 8, 1854, Sec. 6, P. L. 618.¹⁶

Filling vacancies at any election.

92. If vacancies are to be filled, at any election of directors, in addition to the persons to be elected for the regular term, and the voters shall all neglect to designate on their tickets, the term of office for which each person voted for is a candidate, then the person or persons having the highest number of votes, shall be declared elected for the longest term or terms; the next highest in vote, after the filling of the longest term, shall be declared elected for the next longest term, and so on, until all the terms vacant shall be filled.¹⁷

14. In re Contested Election of Gilleland, 96 Pa. 224, 1880.

15. Act May 8, 1854, Sec. 6, P. L. 618.

16. Overton School District, 7 D. R. 611, 1898.

17. Act April 11, 1862, Sec. 2, P. L. 471.

Purpose of the act.

93. This act provided only for cases in which the voters shall all neglect to designate on their tickets the term of office for which each person voted for is a candidate.¹⁸

When school board fills vacancy.

94. Each board of directors shall have power to fill any vacancy which may occur therein by death, resignation removal from the district or otherwise, until the next annual election for directors, when such vacancy shall be filled by electing a person from the district in which the vacancy occurs to supply the same.¹⁹

Meaning of the word "otherwise."

95. Failure by the voters to fill a vacancy, at the regular annual election, will authorize the board to fill it by virtue of the word "otherwise." This means that if a member died or resigned, the board appointed another in his place, and if at the next election the people failed to elect any one to fill this vacancy, the board may again treat it as a vacancy and appoint a person to fill it till the next succeeding annual election.²⁰

Filling of vacancies by the board.

96. It does not require a quorum (four) to fill a vacancy caused by "death, resignation or otherwise." Any number to which the board may be reduced, by any one or all of these causes, can perform this indispensable duty. But to do it satisfactorily, all the actual members should be present, or have had notice to be present, for the purpose. And if only one member remain in office, he can legally take means to fill the board. In that case he should appoint one new member; he and that new member should then appoint a third, and so on, till the board is full. And the whole of these proceedings should be put on the minutes. The law authorizing "less than a majority of directors" to fill vacancies in a school board, only applies when

18. Chamberlain vs. Hartley, 152, Pa. 544, 1893.

19. Act May 8, 1854, Sec 7, P. L. 618.

20. School Laws and Decisions, page 46, 1903.

the number has been reduced below a majority, from causes mentioned in either the seventh or eighth sections of the act of May 8, 1854, P. L. 618.²¹

Expiration of term of appointment.

97. An appointment made by a board of school directors to fill an existing vacancy therein, qualifies the person so appointed to hold the office until the first Monday in June following the first annual election next ensuing such an appointment, at which time the person elected at the preceding annual February election will be qualified to fill the office for the remaining part of the unexpired term.

For example:—If a vacancy occurs in January, 1903, and the board then appoints a person to fill the vacancy, the person appointed will hold the office until June, 1903, at which time the person elected in February of that year, will be admitted to membership in the board on his certificate of election for the unexpired term for one year, or for two years, as the case may be.

If a vacancy occurred in March, 1903, and the board appointed at once a person to fill the vacancy, he would be qualified to hold the office until the first Monday in June, 1904, inasmuch as no annual election intervened until February, 1904, unless the term expires before that date.

Written resignation.

98. When a director resigns his office without being present in the board, the resignation should be written, addressed to the president or, if it be the resignation of the president himself, to the secretary. When a resignation takes place by a member present, it may be entered on the minutes, accepted by the board, and the acceptance also entered on the minutes.²²

21. School Laws and Decisions, page 43, 1903.

22. School Laws and Decisions, page 43, 1903.

Decreasing the number of school directors to two.

99. The several courts of quarter sessions of the peace shall have power and authority, on the petition of twenty or more citizens of any borough in which, by virtue of any act of Assembly, or decree of court, there are now three members of the school board to be elected in each ward after due notice to such school board, to decrease the number of school directors, to be elected in each of said wards, to two.²³

Election after such decrease.

100. And from and after the making of such decree there shall be no election in any ward of said borough for any person to serve as school director, until the number in each ward shall have been reduced to two by the expiration of the term of office of those in office at the time of making such decree; and thereafter upon the expiration of the term of office of each school director, there shall be elected in each of such wards one school director to serve for the term of three years.²⁴

How to decide tie vote.

101. When two or more candidates shall have an equal number of votes for the same term of office, at any election of directors or controllers, whereby their election shall be presented, the said candidate shall appear at the next regular meeting of the board of directors or controllers, which said board shall determine their rights to seats therein, in the following manner: Ballots shall be prepared, equal in number to the opposing candidates, on one-half of which the word "director" shall be written, whereupon the said candidates shall each draw, from a proper receptacle, one of said ballots, and the candidate or candidates drawing the ballot or ballots marked "director," shall be held and deemed duly elected to the said office of director or controller.²⁵

23. Act July 9, 1897, Sec. 1, P. L. 216.

24. Act July 9, 1897, Sec. 1, P. L. 216.

25. Act April 11, 1862, Sec. 2, P. L. 471.

Duty of school board to act and determine a director's right to a seat when there is a tie vote.

Mr. Justice McCollum said :

102. "At the spring election in Turtle Creek Borough in 1894, the relator and John T. C. Bowman were opposing candidates for the office of school director, and each received seventy-nine votes. As they had an equal number of votes for the same term of office, it became their duty, in compliance with section two of the Act of April 11, 1862, P. L. 471, to appear at the next regular meeting of the board of school directors to have their rights to seats therein determined, and the duty of the board to proceed in conformity with the act to decide which of them should hold the office. The parties appeared as by the statute they were required to do, but Bowman refused to participate in the drawing prescribed by it and the board adjourned without taking any action in the premises. The relator again appeared before the board, at its reorganization in June, for the purpose of having his right to a seat in it determined, but the board declined to act, on the ground that the duty of deciding the issue raised by the tie vote rested exclusively upon the board as constituted at the next regular meeting of it after the election. The failure of the board as constituted at that time to determine the rights of the parties before the reorganization of it was regarded by the reorganized board as destructive of the relator's right under the statute, and as having created a vacancy in the office. It therefore declared that a vacancy existed and appointed the respondent to fill it. His title to the office thus acquired is attacked in this proceeding on the ground that the board had no legal warrant for appointing him to it. The learned court below sustained the relator's contention and entered a judgment of ouster against the respondent, from which he appealed.

"It is conceded by the learned counsel for the appellant that the relator's right to have the case decided under the act of 1862 was absolute and could not be taken from him or in anywise impaired by any act of the opposing candidate, but he insists that this right was lost by the

inaction of the board prior to its reorganization in June. In other words it is claimed in support of the appeal that the postponement by the board of the performance of its duty under the act, deprived it of jurisdiction, extinguished the relator's statutory right and created a vacancy in the office, to be filled by it under section 7 of the act of May 8, 1854. The consequences of an allowance of this claim are well calculated to raise a doubt respecting the soundness of it. In the first place the proposition that the effect of the neglect or refusal of the board to discharge its plain duty when the parties appeared before it, was to deprive them of their statutory rights and it of the power to perform that duty at a subsequent meeting, is not tenable. There is nothing in the statute which in terms or by necessary implication attaches such consequences to the non-performance of the duty it imposes. The provision in relation to the time of appearance by the parties was complied with by them, and while it may be inferred from this provision that it was the duty of the board to determine their rights at that time, there is no legislative mandate to this effect, nor penalty prescribed for a failure to do so. Having regard to the subject-matter, object and language of the act of 1862, we are of the opinion that the provision in regard to time is directory only and that the board could have lawfully determined the rights of the parties thereunder at any lawful meeting held at or before the beginning of the school year when the term of office for which they were candidates commenced. The law puts the duty of determining their rights under it upon the board of school directors of the proper district. The board is composed of six persons, two of whom retire from it at the end of each school year and their places are taken by persons chosen for them at the preceding election. The change thus effected in the membership of the board has no effect upon its powers and duties under the act of 1862. It follows from these views that it was the duty of the reorganized board to comply with the relator's request and determine his rights to a seat therein, and that neither its refusal, the neglect of the board before the change of membership in it, nor the act of May 8, 1854,

authorized the appointment to which this litigation relates. We conclude, therefore, that the learned court below did not err in entering the judgment complained of."²⁶

Women eligible to office of school director.

103. Women, twenty-one years of age and upwards, shall be eligible to any office of control or management under the school laws of this state.²⁷

Legal residences.

104. Wherever by the requirements of any law, a particular residence is a necessary qualification for the election or appointment of any officer, removal from such residence shall operate as a forfeit of the office.²⁸

Vacancies without resignation.

105. Every member ceasing to be a resident of the district for which he was a director, thereby vacates his office without resignation, from the day when he ceases being a resident, and the fact being known and entered on the minutes, another is to be appointed in his place. The same principle applies to changes of residence from one ward to another in cities and boroughs, except in cases where the election is by a concurrent vote.²⁹

Adopting city charter.

106. It is held that school directors of a borough do not lose their offices upon the adoption of a city charter.³⁰

Title of school director.

107. Where the right to an office is in question, the controversy must be settled by a quo warranto and not by mandamus.³¹

26. Commonwealth vs. Meanor, 167, Pa. 292, 1895.

27. Sec. 3 of Article X of the Constitution of Pennsylvania.

28. Act May 15, 1874, Sec. 12, P. L. 187.

29. School Laws and Decisions, page 49, 1903.

30. Knew vs. Krause, 3 Pa. C. C. 563, 1887.

31. Carlisle School District vs. Humrich, 18 Pa. C. C. 322, 1893.

Directors exempt from serving in certain offices.

108. All directors shall be exempted from serving in any township, city or borough office, and from the performance of any militia duty.³² The exempting from township, city or borough office, does not prohibit the holding of these offices, except that of auditor and tax collector, but merely confers the right to be excused, if the director desires it.³³

Incompatibility of officers.

109. The office of school director is incompatible with that of collector of school taxes, (relating to Schuylkill county, see special act of February 17th, 1859, P. L. p. 51) constable,³⁴ paymaster, commissioner of roads, township or borough auditor and county commissioners.³⁵

School director can act as judge.

110. A candidate for school director can act as judge of the election at which he is being voted for.³⁶

32. Act May 8, 1854, Sec. 10, P. L. 619.

33. School Laws and Decisions, page 47, 1903.

34. Act May 8, 1876, Sec. 1, P. L. 179.

35. Act May 15, 1874, Sec. 7, P. L. 187.

36. Commonwealth vs. Whitlock, 12 D. R. 791, 1903.

CHAPTER V.

ORGANIZATION OF BOARDS OF DIRECTORS AND CONTROLLERS. OFFICERS AND DUTIES.

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When board shall organize.

116. The organization of each board of school directors shall be had on the first Monday of June or within ten days thereafter in each year.¹

Factional organization.

117. In this case all the directors were legally elected but the board was divided into two warring factions in sections of three each. Each faction met within the time prescribed by law and declared the seats of the other three members vacant, on the ground that after due notice they had neglected to attend regular meetings of the board. Each board filled the vacancies and then proceeded to organize and assumed authority in all matters relating to the schools.

On petition of more than six taxable inhabitants or the district, the court of quarter sessions found that the boards had not been lawfully organized, removed both sets of directors and appointed entirely new men in their places.

On appeal to the Supreme Court, Mr. Justice Dean said, in part :—"The testimony convinced the learned judge of the court below, that these parties, instead of honestly attempting organization, each set of three was trying to usurp all the power and exclude the other three from any share of control. Each had a previous knowledge of the meetings held by the other ; at any one of these the whole six could have met and organized, had that been the purpose ; and if they had done so, no question could have been raised as to the fact of legality of the organization. But they purposely refrained from meeting together for such organization, because that would have included in the local board the obnoxious members. There are many pro-

1. Act April 22, 1863. Sec. 1, P. L. 523.

visions in our statutes for such contingencies. The act of March 16th, 1860, Sec. 2, provides that, any township office failing to give the security required by the first section of the act within one month after his election, his office shall be declared vacant. Justices of the peace elect must file acceptance of office to which they are elected within a fixed time, or there is a vacancy. In all such cases, the non-performance of the preliminary duty enjoined is a fact determinable by proof as in other cases, just as the fact of death or resignation creates the vacancy to be filled by appointment. The same power given to the board by section 8 of act of 1854, to declare the seat of a member vacant for nonattendance at a regular meeting of the board, or to declare the seat of one who has assumed the duties of the office vacant on failure to attend two regular meetings, has been given the court in case of failure of the whole board to organize. Nor does section 4, article VI, of the new constitution repeal section 9 of the Act of 1854. The constitution provides that: "All officers shall hold their offices on the condition that they behave themselves well while in office, and shall be removed on conviction of misbehavior in office, or of any infamous crime."

While the court, in the decree, uses the words "are hereby removed from office," the finding on which the decree was based is distinctly that the board had not been organized; in other words, a vacancy existed, it was so declared, and then filled by appointment. They held no office in the board directed to be organized on the first Monday of June, 1893, because they wilfully refused to organize that board within the plain meaning of the law. Hence there was a vacancy, just as in the case of the supervisor who refuses to file his bond, or of the justice of the peace who refuses to file his acceptance of the office. They were not removed from office in the school board; by their wilful disregard of the law they never had office in it. The constitution has no application to such a case. In the case of neither board was there any such organization as the law contemplates. To hold otherwise would lead to results in many cases wholly subversive of good order

and stability in the control and management of the common schools. Four members of the board are necessary to the transaction of all business, except that of filling vacancies. If, as is not doubted, less than four can declare and fill vacancies, how many independent boards, under such mere pretence as the evidence here shows, may be organized in a district? In this case there were but two; but the fractions of faction are not necessarily limited to halves; they may be thirds or even less, all claiming to be regularly constituted, and each attempting to control the school interests of the unfortunate district. This is not organization, but disorganization, and when the court below found as a fact that neither board had been legally organized its decree was right.²

Oath of office.

118. Directors must take oath of office before entering upon the duties of such office that he will support the constitution of the United States and the Constitution of the Commonwealth of Pennsylvania and the laws thereof; that he has used no unlawful means to procure his election to said office, and that he will discharge the duties of said office for the district in which elected, faithfully and impartially, and to the best of his understanding and ability.³

The school directors are authorized to qualify each other, by oath or affirmation, that they will faithfully discharge the duties of said office. They are authorized to certify the same to the proper authorities.

It is the duty of the person chosen to act as secretary to qualify the person chosen to act as president, and the president in turn shall qualify all the other members of the board.⁴

Officers of board.

119. Each board of school directors and each board of controllers, in cities and boroughs, shall meet and organize by choosing a president and secretary, who shall be mem-

2. Butler Township School District Case, 158 Pa. 159, 1893.

3. Act April 16, 1891, sec. 1, P. L. 22.

4. Act June 25, 1895, P. L. 284.

bers of the board, and a treasurer, who may be a member of the board or otherwise, at the discretion of the directors or controllers.⁵

Business at meeting of organization.

120. The first business at the meeting for organization, after the temporary organization, is the reading of the returns of election, to ascertain who are members. 2.—Directors elect can exercise none of the powers pertaining to their office until after the organization of the new board, which cannot take place until on or after the first Monday of June. 3.—If a board of directors fail to organize, it is such neglect of duty as will justify the court of quarter sessions, upon the complaint of six taxable citizens of the district, and upon due proof thereof, to declare their seats vacant, and appoint others in their stead. 4.—If the school directors neglect to organize within ten days after the first Monday of June, as specified by law, they may do so at a future time, and such organization will be strictly legal, if no final steps should be taken in the meantime to remove the directors elect from office by due course of law. 5.—The officers and members of the old board are to perform their several duties until the first Monday of June. The organization of the old board ceases with the first Monday in June, but steps should be previously taken for calling a meeting of the new board in accordance with the law.⁶

Election of secretary.

121. The board of school directors in every borough and township within this Commonwealth, annually, upon their organization or within twenty days thereafter, shall elect some suitable person as secretary, who may be a member of said board, or otherwise.⁷

How to determine the rights of rival candidates.

122. A board of school directors should be temporarily organized by the persons whose right to office is un-

5. Act May 8, 1854, Sec. 12, P. L. 619.

6. School Laws and Decisions, page 55, 1903.

7. Act April 22, 1905, P. L. 285,

disputed. After such temporary organization, the rights of rival candidates may be passed upon by the meeting, and the one who is shown, in the opinion of a majority of the meeting, *prima facie*, entitled to the disputed office should be recognized and admitted, having first taken the prescribed oath of office. A certificate from the clerk of the court of quarter sessions in due form, showing that he had received a majority of the votes cast for the office in question, would support such *prima facie* right thereto.⁸

Certificate of election.

123. It is the duty of the school board to accept the certificate of the election board, when properly made out, as to who was elected to the office of school director; but if it is shown by admissions that the certificate was made out by two of the members of the election board, some days after the election, in the absence and without the knowledge of the other members of the board, it is not conclusive.⁹

Commencement of term.

124. The term of office of school directors shall commence on the first Monday of June; Provided, That the provisions of this act shall not extend to the city of Philadelphia, nor to the county of Alleghany, nor to the cities of Reading and Lancaster.¹⁰

When term expires.

125. Judge Lovesaid: "The school law provides, that if the board fail or refuse to organize, upon petition to court, their offices may be declared vacant, or they be removed from office and the court appoint to fill such vacancies. * * * There is no provision of the law providing that members of the board shall hold over until their successors duly qualify. And the fact that the law provides for the prompt and summary removal of school directors and the appointment of others by the court shows the clear intent of the legislature that when the term for which a director

8. Commonwealth vs. Fletcher, 180 Pa. 456, 1897.

9. Commonwealth vs. Whitelock, 12 D. R. 791, 1903.

10. Act April 22, 1863, P. L. 523.

has been elected has expired, he at once ceases to be a director, and is therefore without any power or authority to take any action that would bind the district."¹¹

Duties of officers. The president.

126. The president shall preside at the meetings of the board, call special meetings when necessary, issue the duplicate and warrant for the collection of the district taxes, take sufficient bond from the district treasurer for the faithful discharge of his duty, and sign the certificate of the assessment of the district taxes, and all orders issued on the district treasurer by order of the board, also the annual report of the district to the county superintendent, and generally do and perform all other acts and duties lawfully pertaining to the office of president of the board.¹²

Deeds and contracts.

127. All deeds and contracts by the district, including those with teachers, are to be signed by the president.

The president votes on every question like every other member.¹³

Orders.

128. He has no power to draw an order on the treasurer, unless directed by resolution of the board.¹⁴

President cannot employ teachers.

129. If the president engages a teacher, without authority, the contract is not binding on the district; but if the directors in any way recognize the contract, the district is bound to pay the salary agreed upon, until he is legally discharged.¹⁵

President cannot employ attorney.

130. The president of a school board has no authority to bind the board by employing an attorney and authoriz-

11. *Stinclair & Co. vs. Taylor Township School District*, 10 D. R. 697, 1901.

12. Act May 8, 1854, Sec. 13, P. L. 619.

13. *School Laws and Decisions*, P. L. 57, 1903.

14. 2 Wh. Dig. 605, P. L. 17.

15. 2 Wh. Dig; 605, P. L. 20.

ing him to enter judgment in behalf of the school district. The employment must be made by the board.¹⁶

President's duties at close of school year.

131. As soon as the schools of any district shall have closed for the school year, commencing on the first Monday of June preceding, the president of the board of directors or controllers, shall certify, under oath or affirmation, as to the whole number of months the schools in their respective districts have been kept open and in operation, according to law ; also that no teacher has been employed for, or had charge of any of the schools of said district, during the year, who had not a valid certificate from the county superintendent, together with the name and post office address of the district treasurer, and shall forward the same to the county superintendent, who shall immediately approve said certificate, if found to be correct, and transmit it to the state superintendent of common schools ; if it shall appear, by said certificate, that the schools of the district have been kept open and in operation, according to law, at least seven months subsequent to the first Monday in June preceding, and that no teacher has had charge of any of the schools of the district, during the whole time they have been kept open during the year, who had not a valid certificate from the county superintendent, shall draw his warrant upon the state treasurer for the whole amount which such district is entitled to receive from the annual state appropriation : Provided, That the board of directors or controllers, shall, at the same time, forward to the county superintendent a report of the condition of the schools in their respective districts, as directed in the twenty-third section of the act of May eighth, one thousand eight hundred and fifty-four, P. L. 621, supra sec. : And provided, further, That the said certificate and report shall have been transmitted to the superintendent of common schools, on, or before, the fifteenth of July, of the school year succeeding the one for which the certificate and report was made.¹⁷

16. *Commonwealth vs. Kerr*, 25 Pa. C. C. 645, 1902.

17. Act April 17, 1865, sec. 3, P. L. 62, as amended by act April 4, 1899, P. L. 31.

President's liability.

132. It is held that the president of a school board acting for the same, or pretending to act for it, in making a contract which the board had no power to make, thereby becomes individually liable thereon.¹⁸

If the president and secretary draw an order without authority, they are guilty of a misdemeanor; and if the board direct an order to be drawn for any other than a legitimate purpose, they subject themselves to indictment.¹⁹

The secretary. Duties. Compensation.

133. The secretary shall keep full minutes of all the proceedings of the board, in a book provided for that purpose, prepare the duplicate of school tax, keep an account of all abatements and exonerations made by the board, prepare, attest and forward to the county superintendent, the annual certificate that the schools have been kept open during the minimum period specified by law, also the annual report of the district, prepare and attest all orders on the treasurer, and do and perform all other acts and duties lawfully pertaining to the office of secretary of the board; and for his services shall receive such compensation as the board may direct.²⁰

Names and addresses.

134. The names and postoffice addresses of the president, secretary and treasurer, are to be sent upon the organization of the board, at the first meeting after the annual election of directors, by the secretary, to the superintendent of public instruction, at Harrisburg, and also to the county superintendent.

Countersign.

135. The secretary is to countersign—that is, officially attest all deeds and contracts of the board, after they have been signed by the president. If the board has a seal, the secretary is to have the custody of it, and is to affix it to all deeds and contracts signed by the president.

18. Forcey vs. Caldwell, 9 Atl. 466.

19. 2 Wh. Dig. 605, page 19.

20. Act May 8, 1854, Sec. 14, P. L. 619.

Monthly reports.

136. The secretary is to receive the monthly reports from the teachers, examine them, and if correct sign them; if not correct he is to have them made so before issuing the monthly order for the teacher's salary.

End of the term.

137. At the end of the term, the books of monthly reports are to be deposited with the secretary, and kept by him until the commencement of the next term.

Last adjusted valuation.

138. The secretary is to see that the "last adjusted valuation" of taxable persons and property is procured from the county commissioners in time for the making out of the duplicate.

Duplicate.

139. The duplicate is to be made out by the secretary under the direction of the board. He is also to counter-sign it, and keep an account of all exonerations.

"Pennsylvania School Journal."

140. The "Pennsylvania School Journal" when supplied to each district at the expense of the state, is sent to the secretary, and each copy is to be by him laid before the board at the next meeting after its reception.

The file of the Journal, thus received, is also to be preserved and transmitted to his successor in office.

Deeds, contracts, etc.

141. The secretary is to keep the deeds, contracts and other valuable papers and documents of the district and transmit them to his successor.²¹

Required to sign orders.

142. If he refuse to sign an order legally drawn by the president, the board may appoint a secretary pro tem. to do it; and may also remove the secretary from the office of director, for refusing to act in his official capacity.²²

21. School Laws and Decisions, page 58, 1903.

22. 2 Wh. Dig. 605, page 17.

May receive a salary.

143. A school director may receive a salary for acting as secretary of the board, notwithstanding section 66 of the criminal code, which does not apply to the secretary of a school board.²³

No extra compensation.

144. He cannot receive for services rendered apart from his office of secretary; as for delivering books to various school houses in the district.²⁴

Treasurer cannot be secretary.

145. The offices of secretary and treasurer cannot properly be filled by the same person.²⁵

Duty of secretary after annual appointment of teachers.

146. Immediately after the annual appointment of teachers of each district, the secretary of the board shall send a written list of their names, and the schools to which they have been respectively appointed, to the proper county superintendent, with a notice of the day upon which the ensuing term of school, in the district, will commence, and the termination thereof, as directed by the board.²⁶

The treasurer. Bond. Powers and duties.

147. The treasurer shall give bond to the president for the use of the district, in such amount and with such securities as shall be approved by the board, for the faithful performance of his duty; he shall receive all state appropriations, district tax, and other funds of the district, and pay thereout all orders of the board signed by the president and attested by the secretary; he shall settle his accounts annually with the directors or controllers, in default of which he shall not be re-appointed; he shall pay over the balance without delay to his successor in office, and generally do and perform all acts and duties lawfully pertaining to his office, as district treasurer, and shall be

23. Commonwealth vs. Mackin, 8 Kulp 176, 1896.

24. Black vs. School District, 16 Montg. 179, 1900.

25. 2 Wh. Dig. 605 page 21.

26. Act April 11th, 1862, Sec. 4 P. L. 472.

allowed to retain not exceeding two per cent. on the money passing through his hands for his services.²⁷

When to enter office.

148. The treasurer is not to enter upon the duties of his office till his official bond has been presented and approved by the board.

Payment of orders.

149. A treasurer has no right to go behind a school order to inquire into the propriety of its amount. If it be for a legal purpose and signed by the president and attested by the secretary, he must promptly pay it, without delay or objection, upon presentation by the rightful holder, in legal currency, or as good current money as he received. If he has no school money in his hands, that cause or refusal to pay should be immediately reported to the directors, who should take prompt measure to obviate the difficulty.

Teachers' rights.

150. It is the legal right of teachers and others to have their school orders paid in cash upon presentation to the treasurer without hindrance or delay.

Violation of duty of treasurer to purchase school orders.

151. It is a gross violation of duty for a school treasurer to purchase school orders; and if he does it with his own funds when there is money in the treasury, he should be immediately removed from office, and punished for the offence.

Orders on the treasurer.

152. Every order should state on its face the purpose for which it was drawn. If it does not, the treasurer is not bound to pay it; or the auditors on the settlement of his accounts may refuse to allow it.

Executions. Manner of payment.

153. Executions are to be paid by the treasurer, out of any "unappropriated" funds in his hands, or which shall first come into his hands. "Unappropriated" here means money in the treasury beyond the amount of the orders

27. Act May 8, 1854, Sec. 16, P. L. 620.

issued by the board but not paid, previous to the service of the writ of execution. An amount sufficient to pay those previously issued orders to be regarded as appropriated.

Reappointment of treasurer.

154. No treasurer is to be reappointed until his accounts for the preceding year have been settled by the board, and audited by the district auditors.

Settlement.

155. The settlement by the board is for the purpose of ascertaining the condition of the district accounts, the amount of tax, etc., paid in, and of money paid out, and the balance on hand, if any, for the information of the board.

Settlement by the auditors.

156. The settlement by the auditors, of the treasurer's accounts, is to verify those accounts, and to enable an appeal to be taken to court, by either party, if the case demand it.

Treasurer's accounts in independent districts.

157. The accounts of treasurers of independent districts will be settled by the auditors of the township from which the district was taken.

Percentage.

158. Percentage is not to be allowed to any out-going treasurer, on the unexpended balance in the district treasury, handed over to his successor.

Liability of treasurer for failure to pay money to successor.

159. Treasurers who refuse or neglect to pay over to their successors in office any balance of funds in their hands, are liable to the district for interest on the same from the time when this should have been paid over.

Embezzlement.

160. If a school treasurer should convert to his own use, or use by way of investment, any school moneys in his hands, or prove a defaulter, the act will be deemed an embezzlement, and be punished as a misdemeanor.²⁸

28. School Laws and Decisions, page 62, 1903.

Annual settlement of treasurer.

161. The treasurer shall settle his accounts annually with the directors or controllers, in default of which he shall not be re-appointed.²⁹

When settlement is conclusive.

162. A settlement by township auditors of the account of the treasurer of a school district is conclusive unless an appeal is taken.³⁰

Erroneous surcharge of treasurer. Remedy.

163. The remedy of a school district treasurer for erroneous surcharge at an audit of his accounts is by an appeal from the audit as provided by law; it is too late to raise the question upon a motion to strike off the report.³¹

Bank.

164. The treasurer of a school district deposited the money of the district in a bank, to his account as treasurer. The bank failed. Suit was brought to recover the amount of the treasurer and his surety. It was held, that the bank having a reputation of solvency, and there being no negligence on the part of the treasurer, that there could be no recovery, but the loss must fall on the school district and not upon the treasurer individually.³²

Unlawful payment. When treasurer liable.

165. The treasurer of the school fund, who was also a school director, and voted in favor of an unlawful payment, cannot shield himself from liability under the warrant of the board of directors.³³

No discretionary power of treasurer.

166. He has no discretionary power, but must pay the order, when presented, if he has funds; and the auditors cannot refuse to receive these orders as vouchers, even if drawn for an illegal purpose.³⁴

29. Act May 8, 1854, Sec. 16, P. L. 620.

30. Porter vs. School Directors, 18 Pa. 144, 1851.

31. Commonwealth vs. Joyce, 3 Pa. Superior Ct. 609, 1897.

32. School vs. Stoner, 16 Mont. 107, 1900.

33. The Township of Dickinson vs. Linn, 36 Pa. 341, 1860.

34. 2 Wh. Dig. 605, P. L. 23.

He may be compelled by mandamus to pay an order, when he has funds in his hands, and sets up no defence in his answer.³⁵

He is not warranted in refusing to pay an order properly drawn, for a legal indebtedness, because the board has failed to provide funds sufficient to pay all indebtedness of the district, or because payment of the order would not leave enough money in the treasury to meet current expenses.³⁶

Penalty for failure of treasurer to pay over funds.

167. His refusal to pay over the whole funds in his possession, on demand, is evidence that he has used them for his private purposes, and subjects him to criminal prosecution.³⁷

Power to remove treasurer.

168 It appears that the board of directors of the Homeward sub-school district, in the City of Pittsburg, at its organization, in June 1900, chose the respondent treasurer of the board. At a subsequent meeting this action was reconsidered and another person chosen in his place.

On the appeal the Supreme Court decided that the office of treasurer of a school board is an appointed officer within the meaning of the constitution and removal at the pleasure of the board.³⁸

35. Commonwealth vs. Johnson, 24 Pa. Superior Ct. 490, 1904.

36. Commonwealth vs. Virtue, 13 Lug. L. Reg. Rep. 191, 1904.

37. 2 Wh. Dig. 605, page 26.

38. Commonwealth vs. Sulzner, 198 Pa. 502, 1901.

CHAPTER VI.

MEETINGS. VACANCIES. APPOINTMENTS.

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Meeting of directors and controllers.

169. Each board of directors and controllers shall hold at least one stated meeting in every three months ; and such other meetings as the circumstances of the district may require, shall be held at such time and place as may be designated by the president and secretary, upon due notice given to each member of the board. If less than a majority of directors or controllers attend any meeting, no business shall be transacted thereat, except that of adjournment, and of appointment to fill vacancies in the board.¹

" Stated and regular meetings of boards " defined.

170. The terms, "stated meeting" or "regular meeting" of a board of directors or controllers, whenever they occur in the act to which this is a further supplement, (act May 8, 1854, P. L. 617) shall hereafter, be taken to mean the first meeting thereof, for organization, after the annual election of directors or controllers, and the monthly, or

1. Act May 8, 1854, Sec. 17, P. L. 620.

other periodical meetings, held thereafter, in accordance with the standing regulations of the board ; but if there are no standing regulations, then every meeting, held in succession, from said first meeting for organization, by adjournment to a time and place certain, and so entered on the minutes of the proper board, shall be, to all intents and purposes, regarded as a regular meeting.²

School directors have power to declare vacancies and make appointments.

171. That if any person duly elected a school director shall refuse to attend a regular meeting of the board, after having received written notice from the secretary to appear and enter upon the duties of his office, or if any person having taken upon him the duties of his office as director, shall neglect to attend any two regular meetings of the board in succession, unless detained by sickness or prevented by absence from the district, or to act in his official capacity when in attendance, the directors present shall have power to declare his seat in the board vacant, and to appoint another in his stead to serve until the next regular election.³

School directors sustained in removing absentees and appointing others.

172 The seats of three members of the school board of Pittston township, were declared vacant on August 24, 1896, and other persons appointed in their stead. This action of the directors was taken in supposed pursuance of the act of May 8, 1854. It is not denied that the three members failed to attend the meetings of the board held on the 17th, 20th and 24th of August, 1896. If these were "regular" meetings in contemplation of law, then the action taken was within the jurisdiction of the directors, and their discretion cannot be impeached in this proceeding. All official deliberative bodies have the inherent right to assemble in pursuance of a previous adjournment. Where the record of minutes of a previous meeting shows an adjournment to a time and place certain, then such adjourned meeting will be considered regular.

2. Act April 11, 1862, Sec 3, P. L. 471.

3. Act May 8, 1854, Sec. 8, P. L. 618.

But it is claimed in the present case that the general rule applicable to deliberative bodies is qualified in the case of school directors, by act of April 11, 1862, P. L. 471, which in section 3, provides that "the term stated meetings or regular meetings . . . shall hereafter be taken to mean the first meeting thereof for organization after the annual election of directors or controllers, or the monthly or other periodical meetings held hereafter, in accordance with the standing regulations of the board." This act, however, contains the following additional provision: "But if there are no standing regulations, then every meeting held in succession from the said first meeting for organization by adjournment to a time and place certain, and so entered on the minutes of the proper board, shall be to all intents and purposes regarded as a regular meeting." The board of directors of the Pittston township district has never adopted any standing rule or regulation in reference to the time of holding regular monthly meetings. It seems to have been their practice to meet from time to time, at the call of the chairman. This is shown by the minutes. The meetings of the 3d of August, of the 17th, and of the 20th, all seem to have been held in a regular manner, — the first at the call of the chairman, and the others in pursuance of adjournment properly noted on the minute book. At a meeting on the 20th, there being but two directors present, an adjournment was ordered to the 24th at 7:30 P. M. in the Morgan Lane schoolhouse. This also appears on the minutes. It would seem, therefore, that the adjourned meeting held on the 24th of August, 1896 was regular in all respects. And it appears from the depositions that the three members were duly notified of the meeting, but did not see proper to attend it.

Upon appeal to the Supreme Court, a Per Curian opinion was delivered as follows, to wit:

The office of school director was intended to secure a fair and intelligent administration of the school laws in the interest of public education. When these officers cannot, or will not, discharge their duties, the law provides for their prompt removal and the appointment of others better able or more willing to serve the public with fidelity. An

examination of the case has satisfied us that a proper occasion for the exercise of this power of removal and appointment had arisen in Pittston township, and that it was exercised in a regular and valid manner.⁴

Proceedings to ouster a director for absence. Meaning of expressions "to meet at the call of the president," "to adjourn to a time and place certain," and "special or adjourned meetings."

173. The board met for organization on June 5th; this was admittedly a regular meeting and the relator was present. This meeting adjourned "to meet at the call of the president," and on such call a second meeting took place on June 15th, from which the relator was absent.

This was not a regular meeting by the terms of the statute, not being held in accordance with any standing regulations of the board nor by adjournment "to a time and place certain." It was merely what is known in the common usage and understanding of legislative and corporate bodies as a special or adjourned meeting. The board however at this meeting adopted a standing regulation that "the regular monthly meeting was to be held at Hecksherville and Black Heath, on the first Saturday of every month, at half past six o'clock."

The next meeting took place in accordance with this regulation on July 1, the first Saturday of the month. This was a regular meeting and the relator having been absent must have this counted against him. This meeting adjourned to July 10, at which date another meeting took place, from which relator was absent. This was not a regular meeting within the present question, because the standing regulation adopted June 15 had fixed the first Saturday of every month for such meetings. It was, therefore, merely an adjourned meeting and the relator's absence was immaterial in the present controversy.

The next meeting, and the last with which we are concerned, took place on August 5, the first Saturday. This was a regular meeting, and made the second in succession from which the relator was absent. The action declaring

⁴ Keating vs. Jordan, 181 Pa. 168, 1897.

his seat vacant was taken at this meeting. It was clearly premature and therefore void. It is claimed by the relator that he was on his way to the meeting, though somewhat late, and that the action of the board was hurried through, and the meeting adjourned in order to prevent his attendance. On the other hand appellants claim that the resolution to vacate the seat was the last thing done before adjournment, and that the meeting was therefore over when this action was taken. It is not material to this case which version of the facts is correct. The action was void in either view. The statute does not authorize ouster for coming late to meetings, but for absence, and absence cannot be determined or declared until the meeting is actually adjourned. If the relator had entered the meeting during the vote on adjournment he would have had a right to participate in the proceedings, and to be counted as present at the meeting.

It was distinctly held in *Zulich vs. Bowman*, 42 Pa. 83, that until the second meeting was over, it could not be finally ascertained that the member was absent. See also *Genesee Township Independent School District vs. McDonald*, 98 Pa. 444, 450.

There is another equally conclusive reason why no ouster can be declared at the second meeting. The act does not make absence from two regular meetings necessarily a cause for ouster, but only "unless detained by sickness or prevented by absence from the district." Conceding that the burden of showing such excuse would be upon the absent member, he would nevertheless be entitled to notice and an opportunity to be heard to present it, and this could not be afforded without a subsequent meeting. The act is highly penal in that it permits a few individuals, liable to be governed by personal feeling, as is intimated not only by the learned judge in this case, but also in *Zulich vs. Bowman*, *supra*, from the same county, to oust by summary proceedings the officer duly chosen by the electors to represent them in their school matters. The act, therefore, must be strictly

construed, and every step in the proceedings must clearly appear to have been regular and within the authority conferred by the statute.⁵

Procedure upon convening of board.

174. The minutes of the last preceding regular, and of all intervening special or called meetings, should be read immediately after calling the roll, at every regular meeting. But the minutes of previous meetings need not be read at any special or called meetings.

Quorum.

175. Four members, regularly convened, can transact any business within the power of the board; and the majority of a quorum (three) can decide any question except those specified in Act April 11th, 1862, Sec. 4, P. L. 472, which are as follows, to wit: That no tax for school or building purposes shall be levied, no resolution shall be adopted for the purchase or sale of any school real estate, no school house shall be located or its location abandoned or changed, no teacher shall be appointed or dismissed, no annual school term shall be determined on, nor shall any general course of studies be adopted or annual series of text books be selected, in any common school district, except by the affirmative votes of a majority of the whole number of the directors or controllers thereof; and in each of said cases the names of the members voting both in the affirmative and the negative shall be so entered on the minutes of the board by the secretary.

Motions and resolutions.

176. All motions and resolutions of importance, such as those for the laying of tax, purchase or sale of houses and lots, fixing the duration of the school term, etc., should be put in writing by the person offering them, before being entertained by the president, and should be entered on the minutes at length.

5. Commonwealth vs. Gibson, 196 Pa. 97, 1900.

When no business can be transacted.

177. If less than four members attend, no business can be legally transacted, except adjourning to some future time, then to be named, and filling vacancies in the board.

Tie votes loses the question.

178. A tie vote loses the question ; that is, the same number of votes on each side ; or, rather, failing to carry by a majority of those voting, it leaves the question where it was before the vote was taken ; and, therefore, effects no change.

Regular meeting.

179. Every regular meeting should adjourn to meet again at a time and place then agreed on, and so entered on on the minutes; unless the time and place are determined on by the standing regulations, which ought always to be the case.⁶

Special meetings of the board. By whom called.

180. If the president of board of school directors, or controllers, shall neglect or refuse to call special meetings when required by a written request, signed by three members of the board, such meetings may be called by any two members of said board; and any business transacted at a meeting so called, shall be legal, the same as though the meetings had been held pursuant to a notice given by the president.⁷

President and secretary pro tempore.

181. If the president or secretary shall absent himself from any meeting of the board, or being present, shall refuse to perform any duties of his office, a president or secretary pro tempore shall be appointed by members present, an entry thereof being made on the minutes; and the acts necessarily performed by such president or secretary pro tempore, during such meeting shall be as valid and binding on the board and district, as if they had been performed by the regular officer of the board.⁸

6. School Laws and Decisions, page 67, 1903.

7. Act April 17, 1863. Sec. 2, P. L. 62.

8. Act May 8th, 1854, Sec. 15, P. L. 626.

To prevent delay.

182. This act is intended to prevent delay in the proceedings of a board by the absence, or, if present, by the refusal to act of the regular officer. If others are appointed in such cases, pro tempore, the fact, either of absence or refusal to act, should be entered on the minutes, with the names of the persons substituted. This being done, the official acts of the officers pro tempore, or either of them, are as valid and binding on the district as those of the regular officers would have been, had they acted.⁹

Directors' annual meeting. Compensation.

183. It shall be the duty of each school director, in each of the districts of each county, to attend each annual meeting of school directors, called by the county superintendent for the purpose of considering and discussing questions pertaining to school administration ; and each school director attending such annual convention shall receive, for his necessary expenses, compensation at the rate of \$2.00 per diem, and mileage at the rate of three cents per mile, to be paid out of the funds of the district which he serves. But the expenses shall not be paid for more than two days at any annual meeting.¹⁰

When city treasurer becomes school treasurer.

184. The city treasurer shall ex-officio be school treasurer, and before entering upon the duties of his office, shall give bond to the school directors, conditioned for the faithful performance of his duties, in such amount as the board shall direct, and with such sureties as by them approved ; and shall also before he enters upon his office take and subscribe an oath or affirmation of like nature as is hereinbefore prescribed by the city treasurer.¹¹

9. School Laws and Decisions, page 66, 1903.

10. Act April 10, 1905, Sec. 2, P. L. 139.

11. Act May 23, 1874, Sec. 42, P. L. p. 256.

CHAPTER VII.

POWER OF THE COURTS TO REMOVE DIRECTORS.

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Power of the court of quarter sessions to remove directors.

185. If all the members of any board of directors or controllers shall refuse or neglect to perform their duties by levying the tax required by law, and to put or keep the schools in operation, so far as the means of the district will admit, or shall neglect or refuse to perform any other duty enjoined them by law, the court of quarter sessions of the the proper county may, upon complaint in writing, by any six taxable citizens of the district, and on due proof thereof, declare their seats vacant, and appoint others in their stead, until the next annual election for directors.¹

Removal of whole board for failure to organize.

186. A petition was presented to the court of quarter sessions under the above act of assembly praying for the removal of the directors for neglect to perform their duty in failing to organize as a board as required by act of April 22, 1863.

The court said: "The act of 22nd of April, 1863, is peremptory in its injunction that the organization shall be on the first Monday of June or within ten days thereafter, and upon failure to organize, the court of quarter sessions may, upon petition of not less than six taxable inhabitants of the district, declare their seats vacant and appoint others in their stead until the next annual election."

1. Act May 8, 1854, sec 9, P.L. 617.

"The directors elect did not organize within ten days after the first Monday of June, 1893, and this gave jurisdiction to the court of quarter sessions to declare their seats vacant and appoint others. The court did not determine their title to the office, it only determined whether those having an unquestioned title to the office had neglected to perform the official corporate act enjoined by law within the time fixed which was necessary to their existence as a school board. The court on competent evidence ascertains the fact, then the vacancy follows, and the power of appointment by the court. There are many provisions in our statutes for such contingencies. The act of March 16, 1860, sec. 2 provides that, any township officer failing to give the security required by the first section of the act within one month after his election, his office shall be declared vacant.

"Justices of the peace elect must file acceptance of office to which they are elected within a fixed time or there is a vacancy. In all such cases, the non-performance of the preliminary duty enjoined is a fact determinable by proof as in other cases, just as the fact of death or resignation creates the vacancy to be filled by appointment. The same power given to the board by section 8 of act of 1854 to declare the seat of a member vacant for non-attendance at a regular meeting of the board, or to declare the seat of one who has assumed the duties of the office vacant on failure to attend two regular meetings, has been given the court in case of failure of the whole board to organize. These directors hold no office because they failed to organize as the law requires.

"Hence there was a vacancy, just as in the case of the supervisor who refuses to file his bond, or of the justice of the peace who refuses to file his acceptance of the office.

By the wilful disregard of the law they never had office in it."²

Meaning of "so far as the means of the district will admit."

187. The words "so far as the means of the district will admit," do not justify directors in providing means to keep the schools in operation any shorter term than seven

2. Butler township school district, 158 Pa. 159, 1893.
Removal of school directors, 14 D. R. 717, 1905.

months ; because the law expressly enjoins it on the board to keep them "in operation not less than seven nor more than ten months in the year." The discretion given, therefore, only relates to those extremes, between which they may select any term suitable to the means of the district. But if the directors do not keep the schools open at least the minimum term of seven months, the court will remove them from office.³

Removal for failure to elect necessary teacher.

188. Where a board of school directors, by reason of being unable to agree upon the amount of salary to be paid, have failed to appoint a necessary teacher, it is such a neglect of duty as will authorize the court of quarter sessions to declare their seats vacant and to appoint others in their stead.⁴

Removal for non-performance of duties.

189. School directors will be removed from office where they have allowed school property to deteriorate for need of repairs, have failed to pay their teachers and janitors, have neglected to supply fuel to the school, have permitted the schools to remain in an unsanitary condition, and have applied current funds needed for current expenses to pay claims which should have been otherwise provided for.⁵

Power of the court of common pleas to remove directors.

190. Whenever the school directors or controllers of any city, borough, township or independent school district shall wilfully neglect or refuse to provide suitable houses, rooms or buildings in and for any school district within their jurisdiction and under their supervision and control, with ample room and seating capacity for the reasonable and convenient accommodation of all the school children residing within the district who may be in attendance, or who desire to attend the school or schools therein, then ten or more taxable citizens, residents of the said district, may set

3. School Laws and Decisions, page 51, 1903.

4. Bloomsburg School Directors, 121 Pa. 293, 1888.

5. Pittston Township School Directors, 30 Pa. C. C. 92, 1904.

forth in writing the facts in the case, under oath or affirmation of at least six persons who signed the statement, and petition the court of common pleas of the county in which said school district is situated, or in vacation any judge of the said court, for the appointment of a competent inspector, whose duty it shall be to visit the district by order of the court or judge thereof, and inquire into the facts set forth in the complaint submitted, giving due notice to the members of the board of directors against whom the complaint for neglect of duty is made, and to other persons concerned, and the said inspector shall report to the court or proper judge thereof, under oath or affirmation, of the result of his personal inspection and investigation, accompanied by statements of facts and proofs obtained in the case.⁶

Power of the court to grant a rule upon the directors.

191. If, after hearing the allegations and the proof offered to substantiate the charges set forth in the complaint or to disprove them, and, after having fully and diligently inquired into all the facts and circumstances bearing on the case in point, the aforesaid inspector finds that the directors or controllers have refused, neglected or failed, without valid cause for such refusal, neglect or failure on their part, to prove and maintain suitable and adequate accommodations for the school children of the district as the law requires, he shall so report to the court or to the judge appointing him, and the court in such case is hereby authorized and empowered to grant a rule upon the directors or controllers then having jurisdiction in the district, or such of them as have wilfully neglected or failed without justifiable excuse to perform the duties enjoined upon them by law, to show cause why the court or the judge thereof should not remove them from office and appoint others in their stead, until the next annual election for directors.⁷

Intention of the act.

192. By the act of June 6, 1893, the legislature intended to confer a certain power of supervision of the discretion of

6. Act June 6, 1903, Sec. 1, P. L. 330.

7. Act of June 6, 1893, Sec. 2, P. L. 330.

school boards on the state courts, which, under the act of May 8, 1852, P. L. 617, the courts did not have. It was also the purpose of the act to confer on the courts of common pleas a power, through the appointment of an inspector to ascertain the facts and determine whether the directors have exercised a sound discretion in providing suitable accommodations for all the school children of the district; but the findings of fact by such inspector are not conclusive in the court of common pleas.

School directors are not entitled to notice of the time and application for the appointment of an inspector. All that the law requires is that they shall have notice of the investigation.

It is no ground for reversing an order of the court of common pleas that the inspector appointed was an attorney at law.⁸

Power of the court to remove directors under act of June 6, 1893.

193. Under the school law of 1854, the courts of this Commonwealth have invariably refused to interfere with the discretion of school directors in all matters, especially in the building and location of schoolhouses, for the reason that matters of discretion are not reviewable in law or equity.

It is only in cases of bad faith equivalent to fraud that the courts would interfere, suggesting that the remedy for the abuse of discretion was in the votes of the taxpayers at the polls. The act of 1893, however, has expressly given to courts enlarged powers. Justice Dean, in delivering the opinion of the Supreme Court on an interpretation of this act of assembly in re rule upon G. S. Walker, Rose's App. 179 Pa. 24, says, among other things: "There is no doubt, however vaguely expressed, that the legislature intended by the act of 1893, to confer a certain power of supervision of the discretion of school boards on the state courts, which, under the law of 1854, they did not therefore have."

And further on in commenting upon the wording of section 1, viz: "If the directors shall wilfully neglect or

8. Gross' Appeal, 179 Pa. 24, 1897.

Petition of Barr, 188 Pa. 122, 1898.

refuse to provide houses, rooms or buildings, then on petition of ten or more taxable citizens, the court shall act."

"This imposes upon the court the duty" says Justice Dean, "through its own appointees of investigation and putting upon record the facts and testimony. If the inspector then finds that 'without valid cause' the directors have neglected or refused to perform their duty, he shall report.

"It will be noticed, the words, 'wilfully neglected and refused,' are here dropped, and the words, 'without valid cause,' substituted; words not by any means importing the same thing. If a duty be enjoined on an officer, his refusal to perform it is wilful. He has no discretion as to its performance. But if he be commanded to do a certain act, unless he have a valid cause for not doing it, and he then refuses for cause, the question is at once raised between him and his superior, whether the cause is sufficient to excuse him in his disobedience; it brings the judgment and discretion of the subordinate at once under the supervision of his superior.

And further reading of section 2, bears out this view.

"It says the court is empowered to grant a rule on those directors who 'have failed without justifiable excuse' to perform the duty enjoined.

"This discretion also settles another question raised in the same case; that is, that the finding of fact by the inspector is not conclusive, like that of an auditor, on the court below. His reported conclusions are subject to a careful review on the rule to show cause on school directors, which the act of assembly authorizes, in case the inspector finds that the directors have refused, neglected or failed to provide adequate accommodations, as required, 'without valid cause for such refusal, neglect or failure.'

"We have very carefully examined the testimony and the report of the inspector in the case, because we feel that the power given us by the act of assembly should be exercised only in a very clear case. The facts in this case, as we gather them from the testimony taken by the inspector, are plain, and clearly show that there is an absolute necessity for a new schoolhouse at the village of Kirkwood. The testimony shows, as the inspector says, that there are thirty-

eight children of school age in the village of Kirkwood, within a radius of half a mile from the center, and the nearest schools to the said village, which these pupils now attend, are each a mile and a half distant, and that the seating capacity for all school children residing within the district, who desire to attend these is insufficient to accommodate them. These facts are uncontroverted. The testimony also shows, and the inspector so reports as the fact, that there has been no change in school sites or locations during the the past sixty years, and no additional school house facilities were furnished in that time, and the school tax rate in said district in 1895 was but two and a half mills on the dollar, which was reduced to two mills in 1896, and that the board of school directors had reduced the salaries of teachers \$2.00 a month; while the school law authorizes an amount of tax to be levied annually equal in amount to the county and state taxes, which is thirteen mills on the dollar for school purposes and an equal amount for building purposes, making in all twenty-six mills on the dollar.

"It seems to us that there could scarcely be a stronger appeal made to the legal discretion of a court, than the one now before us. The abuse of discretion in this case is very clear, in our opinion, which compels us to make this rule absolute, the costs to be paid by the school district."

In reviewing the case the Supreme Court, by Mr. Justice Dean, said:-

"This was a proceeding under the act of June 6th, 1893, to remove the board of school directors of Colerian township school district, Lancaster County, for neglect and refusal to provide suitable school houses within the district to accommodate all the school children residing therein.

"The court appointed an inspector as provided by the act, who took much testimony on both sides, and in a very careful report finds that the averments of the petition are true. On the report being presented to the court additional testimony was taken in the shape of depositions; the court again carefully considered the whole subject, and in an unanswerable opinion filed concurred with the inspector.

"Then, an order or removal was made, a new board appointed, a tax laid and a new school house built. From the decree of removal we have this appeal by the old board.

"The principal assignment of error is an attack on the power of the court under the act of 1893. We shall not repeat what we said in Ross's appeal, 179 Pa. 25, and in Kittaning School District's Appeal 179 Pa. 60. After a careful consideration we adopt the construction of the act announced in these cases, and we adhere to it now.

"Evidently when the legislature adopted the policy of largely increased state appropriations, it also adopted the policy of conferring on the state courts enlarged powers of supervision. The millions of additional money appropriated were not intended to lessen local taxation, but to increase the efficiency of the schools.

"The court below, on ample testimony, has found the facts warranted its decree; we would not touch it, unless there was a manifest error in its findings or a flagrant abuse of its discretion."⁹

Attorney fees cannot be taxed as costs.

194. On September 8, 1899, six taxable citizens of the school district of the borough of Alden presented a petition to the court of quarter sessions setting forth that the school directors of the said district had neglected to perform their duties as required by law, asking the court to declare their seats vacant and appoint others in their stead.

On this petition a citation was issued commanding the directors to show cause why their seats should not be declared vacant and others appointed in their stead. No answer was made to this citation, and on its return the seats of the members of the board were declared vacant and others appointed in their stead, the court making a decree that the costs of the proceeding should be paid by the school district.

A bill of costs was filed amounting to \$42.95, part of which was a fee of \$25.00, for counsel, who conducted the proceedings. The school district declined to pay the counsel fee of \$25.00, and this rule was taken to compel payment.

9. *Petition of Barr*, 188 Pa. 122, 1898.

The act of assembly of May 8, 1854, P. L. 618, under which this proceeding was instituted, makes no provision for the payment of fees. Without some statute authorizing it none can be allowed. *Commonwealth vs. Myers*, 170 Pa. 380.

No such statute has been pointed out by the petitioners. *In re Incorporation of the Borough of Wayne*, 7 Del., 545, while not exactly in point, decides the principle which governs this case. It is against the contention of the petitioners. Rule discharged.¹⁰

10. *In re School District of Alden Borough*, 23 Pa. C. C. 416, 1900.

CHAPTER VIII.

DIRECTORS—CONTROLLERS TO ESTABLISH SCHOOLS.

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Establish schools.

195. The board of directors of every district, and controllers in cities and boroughs, shall possess and exercise the following powers and perform the following duties, together with the other powers and duties given and enjoined by this act.

They shall establish a sufficient number of common schools for the education of every individual between the ages of six and twenty-one years, in their respective districts, who may apply for admission and instruction, either in person or by parent, guardian or next friend.¹

Discretionary power of directors.

196. Justice Williams said :—"In the performance of this statutory duty, the school directors must decide, in the exercise of their discretion, when a new school house becomes necessary, and where it should be located. This discretion is not an arbitrary one, to be exercised without regard to the public convenience; but a reasonable one, to be exercised in accordance with the judgment of the school directors. Mistakes in judgment are not always to be avoided, nor are they to be punished by a summary dismissal of the directors from office. The courts do not supervise the discretion of the directors as to the manner in which their duties should be performed, but they take notice of their refusal or neglect to perform them. *Heard vs. School District*, 45 Pa. 93."²

Right of children to attend school.

197. The right of the children of a citizen of Pennsylvania to attend the public school is not complete until they have complied with the conditions which the legislature of the state has seen fit to impose.³

No race distinction.

198. It shall be unlawful for any school director, superintendent or teacher to make any distinction whatever, on account of, or by reason of the race or color of any pupil or scholar who may be in attendance upon, or seeking admission to, any public or common school, maintained wholly or in part under the school laws of this Commonwealth.⁴

School directors cannot deny a colored child admission on account of his color, to a common school established by

1. Act May 8, 1854, Sec. 23, P. L. 621.

2. Nicklas's Petition, 146 Pa. 212, 1892.

3. *Nisley vs. Hummelstown Borough School District*, 5 D. R. 732, 1896.

4. Act June 8, 1881, Sec. 1, P. L. 76

them for the separate instruction of white children, and assign him to a branch of said school established by them, in a neighboring building for the separate instruction of colored children.⁵

Children of charitable institutions.

199. Children from other districts who become inmates of a charitable institution do not thereby require the right to free admission to the public schools of the township in which the institution is situated.⁶

Residence of pupils.

200. The residents of one school district are not entitled to free admission to and education in schools of an adjoining district. The taxes levied by a school district are for the education of the children of that district, and are not applicable to the education of the children of another district.

Mere physical presence of a child in the district is not sufficient to give it the right to attend the common schools of that district: *Commonwealth vs. Upper Swatara Township School District*, 164 Pa. 603; *Commonwealth vs. Directors Brookville Boro. School District*, 164 Pa. 607.

When the question of residence and right to admission is therefore raised it is for the determination of the board of directors of the particular district. The decision of the board, after hearing and investigation, is quasi judicial.

That a judge or jury might reach a different conclusion upon the evidence presented is of no concern.

As was said by Mr. Justice Clark, in *McCrea vs. Pine Township School District*, 145 Pa. 550:—"The board, by the statute, is empowered both to employ teachers, and for any one of these causes to dismiss them. So, in the case at the bar, being required by the statute to establish a sufficient number of public schools for the education of every individual between the ages of six and twenty-one years, in their respective districts, they are equally required to protect those schools from the encroachments of those who are not entitled to admission therein. It would greatly impair

5. *Kaine vs. Commonwealth*, 101 Pa. 490, 1882.

6. *Commonwealth vs. Upper Swatara Twp. School Dist.* 164 Pa. 602, 1894.

the government and efficiency of the common schools if the honest judgment and the discretion of the board, exercised in good faith, could be reviewed and reversed by a jury."⁷

Mechanic arts. Athletics.

201. In every city of the second class the central board of education, and in every city of the third class the board of school controllers, and in every borough and township of the first class the board of school directors, shall have power to establish and maintain one or more schools for the instruction of pupils in the useful branches of the mechanic arts, athletics and kindred subjects, to provide the necessary buildings, machinery, apparatus and materials, and to employ teachers and instructors therefor.⁸

Free kindergartens.

202. The school directors or controllers of the several school districts of this Commonwealth may establish and maintain, out of the public school treasury, free kindergartens for children between the ages of three and six years, residing in their districts, and may co-operate with and assist kindergartens that have been or may hereafter be established by other non-sectarian agencies: Provided, however, That the provisions of this act shall not apply to school districts in which kindergartens have been, are now, or hereafter may be, established and maintained by said school district.⁹

Duty of school directors to visit schools.

203. School directors shall exercise a general supervision over the schools of their respective districts, and shall, by one or more of their number, visit every school in the district at least once in each month, and shall cause the result of such visit to be entered on the minutes of the board.¹⁰

7. Commonwealth vs. Wenner, 211 Pa. 637, 1905.

8. Act March 24, 1905, P. L. 51.

9. Act April 23, 1901, P. L. 93.

10. Act May 8, 1854, Sec. 23, P. L. 621.

Annual report to county superintendent.

204. Each board of directors and controllers shall, annually, on or before the first Monday in June, make a report to the county superintendent, setting forth the number and situation of the schools in their district; the character of the teachers, designating whether male or female; the number and sex of the scholars admitted during the year; the number of months in the year during which each school shall have been open; the amount of school tax levied and collected; the cost of school houses, either for building, renting or repairing; and all other expenses which may have been incurred in maintaining the schools in their districts; together with such other information as may be beneficial in forming a just estimate of the operation of the school system.¹¹

State appropriation forfeited.

205. A district failing altogether to forward its annual report for any school year will forfeit its share of the annual state appropriation for that school year.¹²

Power of directors and controllers to establish grades of schools.

206. The directors and controllers of the respective districts shall have power to establish schools of different grades, and to determine into which school each pupil shall be admitted.¹³

Regulation of grade and transfers.

207. The regulation of the grade of schools and the transfer of a school from one grade to another, are within the discretion of the board of public education, and this discretion will not be reviewed by the courts, except in cases of manifest abuse.¹⁴

11.. Act May 8th, 1854, Sec. 23, P. L. 621.

12. School Laws and Decisions, P. L. 195, 1903.

13. Act May 8, 1854, Sec. 20, P. L. 622.

14. Commonwealth vs. Jenks, 154 Pa. 368, 1893.

Deaf mute children. School board to open and maintain a special school for their education.

208. The board of school directors of any school district within this Commonwealth having a population of more than twenty thousand inhabitants, and having within the limits of the city or township, in which said school district shall be, eight or more deaf mute children of proper age for attending school, are hereby authorized to open and maintain a special school for the education and training of such deaf mutes, either in sign language or in articulation as to such board of directors shall seem best for such children.¹⁵

Expenses paid out of school district funds.

209. Any such school so organized by any such board of school directors, shall be a part of the common school system of such school district, and shall be under the control of such board of school directors in the same manner as the other schools in said district: Provided, the deaf mute children may be sent from any school district in the county in which such school shall be established, upon payment, by such district, to the treasurer of the school board by which such school shall be maintained, its proportionate share of the expense of maintaining said school: And provided further, That the expense of educating said deaf mute children shall not exceed the sum of one hundred and fifty dollars for each child during any one year.¹⁶

Indigent blind children. Expenses paid out of school funds.

210. The school boards of this Commonwealth are hereby authorized and recommended to provide suitable apparatus for the instruction of indigent blind children between the ages of nine and thirteen years, and pay the sum out of the school fund as in the case of seeing children, the cost thereof not to exceed twelve dollars for each person in any one year.¹⁷

15. Act May 8, 1876, Sec. 1, P. L. 157.

16. Act May 8, 1876, Sec. 2, P. L. 157.

17. Act May 8, 1876, Sec. 1, P. L. 138.

Extension of time.

211. The time for which indigent pupils of this Commonwealth may be taught in institutions for the instruction of the blind, at the expense of the Commonwealth, is hereby extended to twelve years from the time of entering said institution.¹⁸

Homes for friendless children. Powers of trustees and managers. May petition court.

212. The board of trustees and the board of managers, or a majority of each thereof of any school, commonly known as a home for friendless children, or institution for the purpose of educating and providing for friendless, destitute or vagrant children, now formed, organized or established, or that may hereafter be formed, organized or established in this Commonwealth, not of a denominational or sectarian character, shall have the right to petition the judge or judges of the court of common pleas of the county in which such school or institution is located, asking for a decree authorizing and directing the payment of moneys, out of the funds of said county, for the education and support of the children of said school or institution.¹⁹

Contents of petition to court of common pleas.

213. Said petition shall set forth, under the oath or affirmation of the president of the board of trustees and the president of the board of managers of such school or institution, the number of children cared for during the current year, the number of children bound out or apprenticed, and the age and sex of the same, the income and expenditures of such school or institution, the cost of educating and maintaining the children per capita, and such other matter relative to the wants and condition of the school or institution, and the welfare and advancement of the children, as the said court may direct for its information.²⁰

18. Act May 25, 1887, Sec. 1, P. L. 271.

19. Act April 12, 1875, Sec. 1, P. L. 46.

20. Act April 12, 1875, Sec. 1, P. L. 46.

Order of court and duty of county commissioners.

214. The court of common pleas have the power, and it shall be their duty, on the presentation of a petition as provided for in the preceding section, after full investigation of the same, to order and direct the commissioners of the county or city in which such school or institution is situate, to pay to the treasurer of such school or institution, out of the county funds, such sum or sums of moneys, and in such installments as, in the discretion of the said court, may be deemed just and necessary, and it shall be the duty of the commissioners to draw their warrants, upon the county or city treasurer for the payment of such appropriation, in such manner and form as shall be provided for by the said court.²¹

Court to appoint one-third of trustees and managers.

215. The court of common pleas shall appoint one-third in number of the trustees and managers of any such school or institution accepting the benefits of this act.²²

Duties of treasurer.

216. It shall require the treasurer of any such school or institution to furnish the county or city commissioners an itemized account of the receipts and expenditures of such school or institution at the end of each fiscal year, and to advertise the same in not less than two weekly newspapers published in the county, supporting any such school or institution, one insertion weekly, for four successive weeks.²³

Duty of auditors.

217. It shall require the county auditors, controllers or city controllers, of any city or county, as the case may be, and it shall be the duty of said officers, to audit, settle and adjust the accounts of said treasurer, and to make report thereof to the said court.²⁴

21. Act April 12, 1875, Sec. 2, P. L. 46.

22. Act April 12, 1875, Sec. 3, P. L. 46.

23. Act April 12, 1875, Sec. 3, P. L. 46.

24. Act April 12, 1875, Sec. 3, P. L. 46.

Admission of friendless children.

218. When any such school or institution has accepted the provisions of this act and has sufficient building capacity the management thereof shall admit to the benefits of any such school or institution any friendless, destitute or vagrant child, recommended for admission by the board of school directors of the school district in which said child may reside or be found, or by the directors of the poor of any county in which said school or institution is located, guardians of the poor, overseers of the poor or poor directors, as the case may be, of any city or district included in said county; and in case any child is refused admission, the said court of common pleas, on complaint made thereto by any person after due and legal proof of such refusal, shall enjoin the payment of moneys out of the county funds as authorized by this act; Provided, however, That no child shall be admitted under the age of four nor above the age of sixteen.²⁵

Visitors of institutions.

219. The judges of the court of common pleas of the several counties of this Commonwealth are hereby constituted and appointed ex-officio visitors of any such school or institution; and the grand jury of the court of quarter sessions of the county in which any such school or institution is located, shall, as often as directed by said court, visit, examine and inspect the needs and management of any such school or institution, and the condition of the children therein, as directed by the said court and report the same to the said court.²⁶

Acceptance of act and employment of teachers.

220. The board of trustees and the board of managers of any such school or institutions desiring to accept the provisions of this act, shall set forth the same in their first petition presented to the said court of common pleas, as authorized in the first section of this act; no teacher shall

25. Act April 12, 1875, Sec. 4, P. L. 46.

26. Act April 12, 1875, Sec. 5, P. L. 46.

be employed in any such school or institution who has not received a valid certificate from the superintendent of the schools of the county in which such school or institution is situate.²⁷

**Admission of orphan and friendless children to the public schools.
Tuition.**

221. The school directors of every school district in this Commonwealth shall admit the inmates of any orphan asylum or home for poor and friendless children, situated in their school district, to the schools of the district, provided there is building capacity, upon the payment of a reasonable tuition per capita, which tuition shall be fixed by the superintendent of the schools in the county in which the orphan asylum or home for poor and friendless children is located, upon the application of the directors of said school district, or the managers of the orphan asylum or home for poor and friendless children; Provided, That where said orphan asylum, or home for poor and friendless children, is located in a city, the superintendent of schools in that city shall fix the tuition.²⁸

Children of soldiers.

222. The act of assembly approved July 2, 1895, P. L. 434, and entitled "An act to amend section 1 of the act of April 18, 1893, P. L. 23, entitled 'an act relative to the admission and instruction of children of soldiers of the late war of the rebellion in the common schools of districts outside of those in which their parents, guardians or others entitled to their custody may reside'" is unconstitutional and void, coming within the inhibition of section 7, of article III, of the constitution, providing against class legislation.²⁹

27. Act April 12, 1875, Sec. 6, P. L. 46.

28. Act March 22, 1901, P. L. 55.

29. Sewickley School District vs. Osburn School District, 6 D. R. 211, 1897.

Children not to be employed under certain age.

223. No child under thirteen years of age shall be employed in any factory, manufacturing or mercantile industry, laundry, workshop, renovating works or printing office within this state.³⁰

Employers' register and contents.

224. It shall be the duty of every person so employing children to keep a register in which shall be recorded the name, birthplace, age and residence, name of parent or guardian, and date when employment ceases, of every person so employed under the age of sixteen years.³¹

Affidavit by parent or guardian.

225. And it shall be unlawful for factory, manufacturing or mercantile industry, laundry, workshop, renovating works or printing office, to hire or employ any child under the age of sixteen years, without there is first provided and placed on file an affidavit made by the parent or guardian, stating the age, date and place of birth of said child.³²

When affidavit by child.

226. If said child have no parent or guardian, then such affidavit shall be made by the child, which affidavit shall be kept on file by the employer and shall be returned to the child when employment ceases.³³

Cost of affidavit.

227. And in no case shall there be a charge to exceed twenty-five cents for administering the oath for the issuing of the above certificate.

Qualifications of minors under sixteen. Exceptions.

228. And after the first day of January, 1898, it shall be unlawful for any manufacturing establishment, mercantile industry, laundry, renovating works, printing office,

30. Act June 14, 1897, Sec. 2, P. L. 144.

31. Act June 14, 1897, Sec. 2, P. L. 149.

32. Act June 14, 1897, Sec. 2, P. L. 149.

33. Act June 14, 1897, Sec. 2, P. L. 149.

mechanical or other industrial establishment to employ any minor under the age of sixteen years who cannot read and write in the English language, unless he presents a certificate of having attended during the preceeding year, an evening or day school for a period of sixteen weeks.³⁴

Teacher's certificate.

229. The certificate shall be signed by the teacher or teachers of the school or schools which said minor attended, and said register, affidavit and certificates shall be produced for inspection on demand by the inspector or any of the deputies appointed under this act.³⁵

34. Act June 14, 1897, Sec. 2, P. L. 149.

35. Act June 14, 1897, Sec. 2, P. L. 149.

CHAPTER IX.

JOINT SCHOOLS.

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Establishment of joint schools of adjoining townships.

230. School directors shall have power, with the directors and controllers of adjoining districts, to establish joint schools, and the expense shall be paid as may be agreed upon by the directors and controllers of said district.¹

Building joint school house.

231. If a house is to be built for a joint school it should belong to and its management be vested in, the board on whose territory it stands, and the board of the district should pay a fair compensation for the privilege of sending to it, with the proper proportion for the teachers' salary and expenses. All agreements for the establishment of joint schools should be made for a stipulated length of time, and either of the parties to such an agreement can withdraw from it at the expiration of that time. Directors have no authority to make an agreement for a joint school that will be perpetually binding upon their successors.²

1. Act May 8, 1854, Sec. 23, P. L. 622.

2. School Laws and Decisions, page 117, 1903.

Establishment of joint schools of parts of adjoining counties or townships.

232. It shall be lawful for the boards of school directors of school districts of different counties or townships, adjoining each other, to establish joint schools on or near the county or township line for parts of said districts, upon petition of not less than twenty taxables of said adjoining districts, whenever by reason of natural difficulties and distance from the schools of said district it becomes desirable and proper to so establish the same.³

Joint meeting of boards of directors.

233. The said boards of directors for the purpose aforesaid shall meet jointly, and are hereby empowered to exercise the same authority as in case of the establishment of joint schools for districts of the same county; all proceedings in relation thereto to be spread at large upon the minutes of the respective boards.⁴

School directors may provide transportation for children.

234. The school directors of any district, by the affirmative votes of a majority of the board duly recorded on the minutes, may provide transportation for the children, at the expense of their respective districts, to and from any school in the district in which the children have their residence, or of neighboring districts.⁵

When schools are closed by reason of small attendance.

235. The provisions of this act shall apply only to the pupils of schools, which, in the discretion of the board of school directors, have been closed by reason of small attendance.⁶

Application of the act.

236. And provided further, that it shall only apply to pupils that have a greater distance to travel or are placed at greater inconvenience than before such schools were closed.⁷

3. Act June 10, 1881, Sec. 1, P. L. 116.

4. Act June 10, 1881, Sec. 2, P. L. 116.

5. Act June 22, 1897, Sec. 1, P. L. 181.

6. Act June 22, 1897, Sec. 1, P. L. 181.

7. Act June 22, 1897, Sec. 1, P. L. 181.

Cost of transportation.

237. The cost of transportation per pupil shall not exceed the cost of maintaining per pupil the schools thus closed.⁸

Expenses and tuition, how paid.

238. The expense incurred providing for transportation of school children under this act, and the tuition for education when admitted to the schools of other districts, shall be paid by the treasurer of the district in which the children have place of residence, upon the order of the school board of directors.⁹

Directors shall not be party to any contract.

239. No member of the board or other official of the township, borough or school district, shall be a party to any contract or agreement with the board, or receive any remuneration for services rendered to the district in conveying children to or from any school.¹⁰

Purpose of act.

240. Judge Linsay says:—"That act (act June 22, 1897) only applies to schools that have 'closed by reason of small attendance.'

"The act was passed for the purpose of authorizing the the directors in their discretion to close a school where changes in the neighborhood had reduced it in number until it became burdensome to keep up the school. In such cases where the school is closed, the directors are authorized to furnish transportation to scholars to other schools where the distance is too great for them to travel. Again, the law does not authorize the schools directors to pay the board of pupils. It only authorizes them to pay transportation to other schools."¹¹

8. Act June 22, 1897, Sec. 1, P. L. 181.

9. Act June 22, 1897, Sec. 2, P. L. 181.

10. Act June 22, 1897, Sec. 2, P. L. 181.

11. Pieffer vs. Reno, 29 Pa. C. C. 145, 1904.

Contract for transportation of children under

Section 2, act of June 22, 1897.

241. The entire common school system of this Commonwealth is special and statutory, and in order to create any liability under a contract provided for by the common school laws, the statutory requisitions must be complied with.¹²

Before a person may recover for the transportation of a child to a school, he must affirmatively show that the school board contracted for such transportation by the affirmative votes of a majority of the board, duly recorded on the minutes of the board.¹³

Attending school in adjoining districts.

242. If it shall be found, that on account of the great distance from or difficulty of access to the proper school house in any district some of the pupils thereof could be more conveniently accommodated in the schools of an adjoining district, it shall be the duty of the directors or controllers of such adjoining districts to make an arrangement by which such pupils may be instructed in the most convenient school of the adjoining district; and the expenses of such instructions shall be paid, as may be agreed upon by the directors or controllers of such adjoining districts by resolution or agreement entered upon the minutes of the respective boards.¹⁴

Discretionary power of school boards.

243. Chief Justice Lowrie said:—"The school law does not leave the directors without any discretion relative to sending children to the schools of an adjoining district, and does not seriously impair the district division. Each board has express discretion relative to the school within the district which each pupil shall attend; and it would be quite absurd to leave them without it, when there is a nearer school in an adjoining district to which the pupil wishes to go.

12. Cascade School Dist. vs. Lewis School Dist., 43 Pa. 318, 1862.

13. Boyle vs. Summit Twp. School Dist., 28 Pa. C. C. 351, 1903.

14. Act May 8, 1854, Sec. 23, P. L.

"There must be great distance and great difficulty of access to the schools of the district, before there can be any right to ask to be sent to a more convenient school of an adjoining district; and it seems to us that there is nothing of the kind here. Whether the distance or difficulty of access is to be regarded as great or not, depends much upon circumstances,—such as the age of the children, the density of the population, and the customs of the locality, and therefore must be left in a great degree, to the discretion of the directors; and of course their abuse of this discretion must be very clear before they can be adjudged guilty of official misconduct. We must be liberal and generous towards this discretion, in reviewing the exercise of it; for a strict and jealous supervision would be fatal to the discretion itself. We must not interpret the law so as to keep the directors in perpetual fear of the courts, nor so as to set them to guard against this law, by so arranging their school houses around the district, that few or none can have the chance of claiming that any school of an adjoining district is more convenient.

"We think that the dismissal of the plaintiff's petition is fully justified by the reason assigned by the learned president of the sessions. It is well for the school system, for the peace of the neighborhoods, and for the securing of discreet men for directors, that he has so treated the case as to warn men that they must be cautious in attempting to get the courts to interfere with the discretion of the school directors.

"Honorable and trustworthy men will not accept public positions, if they understand it to be the rule that all their official acts are subject to a suspicious supervision by the people, or by their official superiors. Real worth is generous in its judgment and treatment of others, and will always expect the same for itself; and will resent the contrary by refusing all functions that are subject to it."¹⁵

15. *Freeman vs. School Directors*, 37 Pa. 386, 1860.

In re East Hopewell Twp. Sch. Dist., 7 D. R. 177, 1898.

Patterson vs. School Directors of Cecil Twp., 24 Pa. C. C. 574, 1901.

Commonwealth vs. Penns Twp. School Dist., 31 Pa. C. C. 552, 1904.

Discretion of directors reviewable by the courts.

244. Under the act of May 8, 1854, the discretion vested in directors to make an arrangement whereby scholars may attend a school in an adjacent district is reviewable by the court, and if it be shown that petitioners' children have nearly one and one-fourth miles farther to travel to reach the school house in their proper district than to reach the school house in an adjacent district, and are of very tender years, the court will interfere and make an order requiring directors to enter into an arrangement whereby they may attend school in the adjacent district.¹⁶

Contract between districts.

245. The Supreme Court said:—"The whole system of common schools is special and statutory. If one district is to be charged with the expense of educating the children of an adjoining district, it must be done in the manner the statute prescribes. It must be done in pursuance of an 'arrangement' between the directors of the respective districts, and that arrangement must be by 'resolution or agreement', and the resolution or agreement must be entered upon the 'minutes of the respective boards.'

"Out of nothing less than this can pecuniary liability for such service result. Regular official action, evidenced by official minutes, is what the statute requires to ground such action as the present, and because it is a statutory requisition, all equities and implied liabilities are excluded.

"In this case that was not done."¹⁷

Payment of tuition by non-resident pupils.

246. A promise by a non-resident parent to pay a school district for the tuition of his children may be enforced, although a charge for such tuition could not be enforced in the absence of such promise.¹⁸

16. *Young vs. Pymatuning Twp. School Dist.*, 14 D. R. 773, 1905.

17. *Cascade School District vs. Lewis School District*, 43 Pa. 318, 1862.

18. *Westfield Borough Sch. Dist. vs. Dillman*, 22 Pa. C. C. 567.

CHAPTER X.

PUBLIC HIGH SCHOOLS.

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Public high schools in cities or boroughs with a population of 5000 or over. Powers of controller and directors.

247. The board of controllers or directors of school districts which are composed of cities or boroughs divided into wards for school purposes, or boroughs not divided into wards for school purposes, having a population of five thousand or over, shall, in addition to the powers and duties conferred or enjoined by the act of the eighth day of May, one thousand eight hundred and fifty-four, and the supplements thereto, possess the following powers and perform the following duties.—¹

1. Act May 26, 1893, Sec. 1, P. L. 146.

They may establish a public high school. Admission.

248. They shall admit to said public high school all children under the age of twenty-one years residing within said school district, who shall be found qualified for admission thereto after having undergone such an examination as shall be prescribed by the said board of directors or controllers: Provided, Said board of controllers or directors shall have power to prescribe the terms upon which other children than those residing in the said district shall be allowed to attend said public high school.²

Supervision over teachers and pupils.

249. They shall exercise a general supervision over said public high school, appoint all the teachers therefor, fix the amount of their salaries, and shall have power to dismiss any teacher at any time for incompetency, cruelty, negligence, immorality, or other cause; they may suspend or expel from said school all pupils found guilty, on full examination and hearing, of refractory or incorrigible bad conduct, and shall have power to make all proper regulations and rules for the government and discipline of said school.³

Visitation.

250. Said board of controllers or directors shall visit said public high school, by at least one of their number, at least once in each week and cause the result of such visit to be entered on the minutes of said board of controllers.⁴

Branches to be taught and books used.

251. They shall direct what branches of learning shall be taught and what books shall be used in said public high school.⁵

Qualifications of teachers.

252. The said board of controllers or directors shall not employ any person as teacher in said public high school

2. Act May 26, 1893, Sec. 2, P. L. 146.

3. Act May 26, 1893, Sec. 3, P. L. 146.

4. Act May 26, 1893, Sec. 4, P. L. 146.

5. Act May 26, 1893, Sec. 5, P. L. 146.

unless such person shall produce a certificate as would entitle him or her to teach in the ward schools, which certificate shall set forth the branches of learning the holder thereof is qualified to teach, and provided no teacher shall be employed in teaching any branch of learning other than those enumerated in his or her certificate.⁶

Maximum length of term. Payment of expenses.

253. The said board of controllers or directors shall maintain and operate said public high school, not exceeding ten months in each year, and shall pay all the necessary expenses thereof by drafts on the treasurer of said board signed by the president and attested by the secretary thereof.⁷

Power to hold or convey real estate.

254. They shall have power to purchase, procure and hold such real and personal property as may be necessary for the establishment and support of said public high school, and the same to sell, alien and dispose of, when no longer necessary for the purpose aforesaid: Provided, Said real estate shall not exceed one hundred thousand dollars.⁸

Grounds and buildings.

255. They shall cause suitable lots of ground to be procured and suitable buildings to be erected thereon for the accommodation of said public high school, and shall keep the same in repair, and shall cause to be rented a suitable building for the temporary accommodation of said public high school until a suitable, permanent building can be obtained.⁹

Site. How procured.

256. Whenever said board of controllers or directors shall be unable to procure an eligible site for the erection of said public high school by the owner or owners of the

6. Act May 26, 1893, Sec. 6, P. L. 146.

7. Act May 26, 1893, Sec. 7, P. L. 146.

8. Act May 26, 1893, Sec. 8, P. L. 146.

9. Act May 26, 1893, Sec 9, P. L. 146.

land, it shall and may be lawful for said board of controllers or directors to enter upon and occupy sufficient ground for such purpose, but before doing so, said board of controllers or directors shall tender to such owner or owners the bond of said school district conditioned for the payment of the damages suffered by said owner or owners by reason of such entry and occupancy when finally ascertained; if the owner refuse to accept said bond, or cannot be found, or is not sui juris, the same shall then be presented to the court of common pleas of the proper county for its approval, after notice to the property owner by advertisement in a newspaper of said county at least once a week for three weeks. Upon the approval of said bond, and its being filed, the right of said board of controllers or directors to enter upon said land shall be complete. Either said board of controllers or directors, or said owner or owners of said land may, within twenty days from the approval of said bond, apply by petition to the court of common pleas of the proper county for the appointment of viewers, and thereupon said court shall appoint three disinterested citizens of said county, and not owners of property or residents in said district, and appoint a time not less than twenty or more than thirty days thereafter, when said viewers shall meet upon and view said premises, of the time of which meeting ten days' notice shall be given to the viewers and the opposite party, and the said viewers, or any two of them, having been first duly sworn or affirmed faithfully, justly and impartially to decide and a true report to make concerning all matters and things to be submitted to them, and having viewed the premises, and having made a just and fair computation of the advantages and disadvantages, shall estimate and determine whether any, and if any, what amount of damages has been or may be sustained, and to whom payable, and make report thereof to said court, and when the damages are finally ascertained, either by the confirmation of said report by the court, or the verdict of the jury, judgment shall be entered thereon, and if the amount thereof shall not be paid within thirty days from the entry of such judgment, execution may issue thereon as in other cases of

judgments against school districts, and such viewers shall each be entitled to the sum of one dollar and fifty cents for each day necessarily employed in the performance of the duties herein prescribed, to be paid by the school district.¹⁰

Councils shall levy tax. Levying of tax in boroughs not divided into wards.

257. The councils of any such city or boroughs divided into wards for school purposes referred to in the first section of this act, shall at any time, not oftener than once in each school year, levy a special tax for such amount as the said board of controllers or directors may by resolution duly passed fix and determine, to be called, "The public high school building tax," not exceeding the amount of one mill in any one year; boroughs not divided into wards for school purposes mentioned in this act shall levy and collect said high school tax as they levy and collect other school tax, without the intervention of the borough council aforesaid, to be applied solely to the purpose of purchasing or paying for the ground and the erection of a school building thereon and the repair of the same, which tax shall be levied and collected at the same time and in the same manner and with like authority as other tax are levied and collected for school purposes in the respective districts to which this act shall apply.¹¹

May borrow money and issue bonds therefor.

258. That for the purpose of erecting such school building or purchasing or procuring grounds whereon to erect such school buildings as provided by this act, it shall be lawful for said board of controllers or directors to borrow money at a rate of interest not exceeding six per centum, and issue bonds therefor, in sums not less than one hundred dollars, which bonds may be registered in such manner as the said board of controllers or directors may hereafter provide: Provided, That this act shall not apply to school districts governed by special act of assembly.¹²

10. Act May 26, 1893, Sec. 10, P. L. 146.

11. Act May 26, 1893, Sec. 11, P. L. 146.

12. Act May 26, 1893, Sec. 12, P. L. 146.

Public high school in any school district.

259. The directors or controllers of any school district may establish a public high school, and the state superintendent of public instruction shall prescribe a uniform course of instruction which shall be taught in the high schools of each grade.¹³

Joint high schools.

260. The directors of any two or more townships or districts shall have power to establish joint high schools, and the expense shall be paid as may be agreed upon by the directors or controllers of said districts, who shall meet jointly as often as may be necessary for the transaction of business pertaining to the joint high schools under their jurisdiction, and all proceedings in relation thereto shall be spread at large upon the minutes of the respective boards.¹⁴

Grades of high schools.

261. A high school maintaining four years of study beyond the branches or learning prescribed to be taught in the common schools and called the common branches shall be known as a high school of the first grade; a high school maintaining three years of study beyond the common branches shall be known as a high school of the second grade; and high schools maintaining two years of study beyond the common branches shall be known as a high school of the third grade: Provided, That the reviews necessary for the prosecution of high school studies shall not be excluded from the estimate of the year's study beyond the common branches.¹⁵

Annual appropriation.

262. From the annual appropriation in aid of high schools, a high school of the first grade shall receive each year a sum not exceeding eight hundred dollars, a high school of the second grade a sum not exceeding six hundred dollars, a high school of the third grade a sum not

13. Act June 28, 1895, Sec. 1, P. L. 413.

14. Act June 28, 1895, Sec. 2, P. L. 413.

15. Act June 28, 1895, Sec. 3, P. L. 413.

exceeding four hundred dollars. If the appropriation is insufficient to pay the above amounts to the several high schools, then the appropriation shall be distributed to the schools of the respective grades in such a manner that each school shall receive a sum proportional to the number of years of advanced study maintained in its course or courses of instruction: Provided, That any high school established at the fall opening of the school year beginning on the first Monday of June, one thousand eight hundred and ninety-five, shall be paid at the end of the year as a high school of the third grade.¹⁶

Employment of teachers.

263. The directors or controllers of every district receiving aid in accordance with section four of this act shall employ for said high school at least one teacher legally certified to teach book-keeping, civics, general history, algebra, geometry, trigonometry, including plane surveying, rhetoric, English literature, Latin, including Caesar, Virgil and Cicero, and the elements of physics, chemistry, including the chemistry of soils, botany, geology and zoology, including etymology, and no teacher shall be employed to teach any branch or branches of learning other than those enumerated in his or her certificate.¹⁷

Sworn statements to superintendent of public instruction.

264. The directors or controllers of every district establishing a high school and receiving state aid in support of said high school shall, before the first day of September following the close of each school year, make to the superintendent of public instruction sworn statements giving full information concerning the teachers, classes and courses of study of every high school under their jurisdiction.¹⁸

16. Act June 28, 1895, Sec. 4, P. L. 413.

17. Act June 28, 1895, Sec. 5, P. L. 413.

18. Act June 28, 1895, Sec. 6, P. L. 413.

Supervision of high school.

265. High schools established in accordance with this act of assembly shall be under the supervision of the superintendent of the city, borough or county in which they are situated.¹⁹

Approval of courses of study.

266. The courses of study in high schools receiving state aid shall be subject to the approval of the superintendent of public instruction.²⁰

Centralization of township schools and provision for township high schools. Definition of "Centralization."

267. The word, "centralization" is hereby defined as a system of schools in a township, providing for the abolishment of all sub-districts, and the conveyance of pupils to one or more central schools.²¹

Petition and duty of school board.

268. A township board of school directors, upon the petition of a majority of the qualified electors representing or owning property to the amount of not less than one-fourth of the assessed valuation of such township district, must submit such question to a vote of the qualified electors of such township district, and if more votes are cast in favor of centralization than against it at such election, it shall then become the duty of the board of school directors, and such board of school directors is required, to proceed at once to the centralization of the schools of the township, and if necessary purchase a site or sites and erect a suitable building or buildings thereon: Provided, That if at the said election more votes are cast against the proposition for centralization than for it, the question shall not again be submitted to the electors of said township for a period of two years.²²

19. Act June 28, 1895, Sec. 7, P. L. 413.

20. Act June 28, 1895, Sec. 8, P. L. 413.

21. Act April 25, 1901, Sec. 1, P. L. 105.

22. Act April 25, 1901, Sec. 2, P. L. 105.

Elections and ballots.

269. All elections ordered by a board of school directors, in pursuance of section 2 of this act, shall be held at the usual place or places of holding township elections at a regular election, and notice shall be given and the election conducted in all respects as provided by law for the election of township officers, and the ballots shall have printed thereon : For centralization—Yes, For centralization—No.²³

Issuing of bonds.

270. Should the board of school directors deem it necessary to issue bonds to purchase a site or sites, or erect a building or buildings, for the purpose of such centralization, then the election shall be conducted as provided in section 3 of this act, but in such cases the ballots shall also have printed thereon : For levying a tax to purchase——site (or sites) and erect——(building or buildings) for the centralization of schools, at a cost not to exceed \$———Yes, for levying a tax to purchase———site (or sites) and erect———building (or buildings) for the centralization of schools, at a cost not to exceed \$———No ; and if more votes are cast in favor of levying said tax for said purpose than against said proposition at such election, it shall be the duty of the said board of school directors, and the board of school directors is authorized, to issue bonds and sell the same as provided by law, and to levy a special tax to provide for the payment of the same, together with interest thereon, provided said levy shall not in any one year exceed five mills on the dollar valuation, and said bonds shall not bear more than five per centum interest, and shall not be sold at less than their face value.²⁴

Course of instruction and transportation of pupils.

271. In a township in which proceedings have been had under the preceding sections of this act and the vote has been favorable for centralization, the board of school

23. Act April 25, 1901, Sec. 3, P. L. 105.

24. Act April 25, 1901, Sec. 4, P. L. 105.

directors are required to maintain and support a graded course of instruction, and may include a high school course of not less than two years; they are also required to furnish transportation to and from school to all pupils living more than three-fourths of a mile from the central building, said distance to be measured from the enclosure immediately surrounding their residence to the school house property, along the nearest public highway: Provided, That no such school shall be abolished or discontinued in any sub-district where, on account of the geography of the district, it is impracticable for the pupils to be conveyed to the school established at the point of centralization.²⁵

When children may attend high school in another district.

272. Children residing in the school districts in which no public high school is maintained, may attend a high school in some other district, located near their homes; provided the consent of the directors of the district in which said high school is located be first obtained; the cost of tuition and school-books, which shall not exceed that of the tuition and school-books of children in the same grades or courses in the district maintaining such high school, shall be paid to the district receiving such children, out of the moneys raised by taxation for public school purposes in the district in which said children reside: Provided, That, before admission to a high school, such pupil shall be examined and found qualified for high school work, by the principal of such high school.²⁶

Children may attend higher grades in other districts.

273. Children residing in school districts in which graded public schools, or graded courses of study, are or hereafter may be maintained, may attend the public high schools of higher grades or courses of study, including high schools,

25. Act April 25, 1901, Sec. 5, P. L. 105,

Amended by Act June 26, 1901, P. L. 600.

26. Act March 16, 1905, Sec. 1, P. L. 40.

in other districts; the cost of tuition, which shall not exceed that of the tuition of children in the same grade or courses in the districts maintaining said higher grades or courses and high schools, to be paid the districts receiving such children, out of the money raised by taxation for common or public school purposes in the districts in which said children reside: Provided, however, That such attendance shall not begin until after provision for the same, and its duration, and for the expense of tuition according to the foregoing restrictions, has been made by the boards of directors of the districts interested, by security as required by existing laws.²⁷

27. Act April 3, 1903, Sec. i, P. L. 153.

CHAPTER XI.

EVENING SCHOOLS.

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Establishment.

274. It shall be the duty of the board of school directors or school controllers of any school district in this Commonwealth, upon the application of the parents of twenty or more pupils, above the age of six years, residents of said school district, to open a free evening school for their tuition in orthography, reading, writing, arithmetic and such other branches as may be deemed advisable, and to keep open said schools for a term of not less than four months in each year, each of the said months to consist of twenty days, and each of said days an evening session of at least two hours: Provided, however, That when the average daily attendance for one month falls below fifteen daily, said board of school directors or school controllers may, at their option, close said evening school for the remainder of said term.¹

Employ teachers.

275. Upon such application, the board of school directors or school controllers shall proceed, without unnecessary delay, to hire a competent teacher, and open said evening school in a convenient location: Provided, however, That two or more contiguous school districts may, at any time, unite in the establishment and support of one or more evening schools, and contribute pro rata to the expense of their maintenance.²

1. Act May 22, 1883, Sec. 1, P. L. 37.

2. Act May 22, 1883, Sec. 2, P. L. 37.

Qualification of teachers.

276. The qualifications of teachers for said evening schools shall be the same as those for the teachers of the public schools of the Commonwealth, as already made and provided, or as may hereafter be made and provided by law.³

Expenses.

277. The expenses for the support and maintenance of said evening schools shall be defrayed out of the taxes raised for the support of the common schools: Provided, That said school board may, in making their estimates for the school year, allow and set aside a certain sum for the support and maintenance of said evening schools, and levy and collect their tax rate accordingly.⁴

Evening high schools may be established.

278. The board of school directors or school controllers of any school district may, where necessary, establish an evening high school, and the board of school directors or school controllers of two or more contiguous school districts may unite for the establishment and support of an evening high school; the curriculum of which shall be drawn up and arranged by the several school boards, in joint session met and assembled, according to their best judgment and the necessities of their respective districts.⁵

Admittance.

279. No pupil shall be admitted to said evening schools, who is unemployed during the day, or in actual attendance upon any school during the day, public or private.⁶

Procedure on refusal to establish evening schools.

280. Should any board of school directors, or controllers, neglect or refuse to carry out the provisions of this act, the petitioners aforesaid may present their petition to the court of common pleas of the proper county, setting forth, that applica-

3. Act May 22, 1883, Sec. 3, P. L. 37.

4. Act May 22, 1883, Sec. 4, P. L. 37.

5. Act May 22, 1883, Sec. 5, P. L. 37.

6. Act May 22, 1883, Sec. 6, P. L. 37.

tion had been made to the proper board of school directors or controllers as aforesaid, and that said board had neglected or refused to carry out the provisions of this act; whereupon such court shall, after due proof of the notice of the presentation of such petition having been served upon the president and secretary of such board, proceed to hear and determine as to the necessities and propriety of the establishment of such school or schools, and in its discretion order the board of school directors or controllers, to open and maintain such school or schools, with power to enforce such order by attachment or mandamus, at the discretion of the court.⁷

When to take effect.

281. The provisions of this act shall not go in force until the beginning of the regular school year, Anno Domini, one thousand eight hundred and eighty-three: Provided, That the provisions of this act shall not apply to any part or section of the state, where special provision exists for night school.⁸

Additional teachers.

282. As the average daily attendance increases, additional teachers may be engaged and retained at the discretion of the school directors or controllers aforesaid.⁹

Petition for schools.

283. Rice J. says:—"The act of May 22, 1883, P. L. 37, relating to free evening schools provides that if any board of school directors or controllers shall neglect or refuse to carry out the provisions of the act, the court, upon petition, and after due proof of notice, shall proceed to hear and determine as to the necessities and propriety of the establishment of such school, and in its discretion may order the board of directors to open and maintain same.

7. Act May 22, 1883, Sec. 8, P. L. 37.

8. Act May 22, 1883, Sec. 9, P. L. 37.

9. Act May 7, 1889, Sec. 1, P. L. 110.

The power of the court is to be exercised only in clear cases, where the directors have wilfully neglected or refused to perform their duties.

"The petition which is at the foundation of these proceedings was not served on the secretary of the board until December, 1891. Passing the objections to the manner in which it was signed and served, we think there were substantial reasons for not granting the prayer of the petitioner. The board of directors had resolved, at the beginning of the school year, to have eight months of school, had levied a thirteen mill tax, and had employed the teachers and fixed their salaries. The tax was barely sufficient to pay the expenses incurred on that basis, and the directors had no power to lay an additional tax, even if they had gone to the full limit of their power in their first levy. School directors are not required to make bricks without straw, and at the time the petition was presented to them it was practically impossible for them to open a night school for a term of not less than four months, as the law provides, without closing the day schools for a nearly equal length of time, and perhaps, breaking their contract with the teachers employed for those schools. We do not think the legislature contemplated the compulsory establishment of a night school under such circumstances especially where the number of pupils who attend it is barely sufficient to warrant the opening of such a school under any circumstances.

"Under the facts proved we do not think the directors were in fault, but even if they were, it is now too late to establish a school for the current year, and the court would not be authorized to order one for the ensuing year when it is not certain that the conditions will be such as to require it. The time for the new board to organize and to levy taxes for the ensuing year is at hand, and we have no doubt, that, if a proper petition is presented to them in due time, they will make arrangements to comply with the law."¹⁰

10. Denison School District, 6 Kulp 457, 1892.

Night schools for manual training of children.

284. Whenever the school directors or controllers of any city of the Commonwealth shall be requested by fifty or more taxpayers, they shall establish and equip sufficient night schools for the manual training of children above the age of twelve years, and shall keep the same open as many months in the year as day schools are kept open in such city. The court of common pleas of the proper county shall have jurisdiction to enforce this act by mandamus: Provided, That when the average attendance shall fall below fifteen nightly, the board may at their option, close the school for the remainder of the term.¹¹

11. Act May 11, 1901, Sec. 1, P. L. 176.

CHAPTER XII.

SCHOOL DIRECTORS AND CONTROLLERS TO DIRECT STUDIES AND EXPEL PUPILS FOR MISCONDUCT.

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Direct studies and select books.

285. School directors and controllers shall direct what branches of learning shall be taught in each school, and what books shall be used.¹

Branches required to be taught.

286. The branches of orthography, reading, writing, arithmetic, geography, English grammar, United States history,² physiology and hygiene, which shall, in each division of the subject so pursued, include special reference to the effect of alcoholic drinks, stimulants and narcotics upon the human system, shall be included in the branches of study now required by law to be taught in the common schools, and shall be introduced and studied as a regular branch by all pupils in all departments of the public schools of the Commonwealth, and in all educational institutions supported wholly or in part by money from the Commonwealth,³ and kind treatment of birds and animals,⁴ and in cities of the first and second class a regular course in physical culture,⁵ are peremptorily required to be taught.

Optional as to other branches.

287. Other branches may be introduced from time to time by the school directors or controllers.⁶

1. Act May 8, 1854, Sec. 23, P. L. 621.

2. Act May 8, 1854, Sec. 38, P. L. 625.

3. Act April 2, 1885, Sec. 1, P. L. 7.

4. Act March 27, 1905, Sec. 1, P. L. 60.

5. Act March 8, 1901, Sec. 1, P. L. 49.

6. Act May 8, 1854, Sec. 38, P. L. 625.

Additional branches in cities of the second and third class.

288. In every city of the second class the central board of education, and in every city of the third class the board of school controllers, and in every borough and township of the first class the board of school directors, shall have power to establish and maintain one or more schools for the instruction of pupils in the useful branches of the mechanic arts, athletics and kindred subjects, to provide the necessary buildings, machinery, apparatus and materials, and to employ teachers and instructors therefor.⁷

System of humane education.

289. A system of humane education, which shall include kind treatment of birds and animals, shall be included in the branches of study now required by law to be taught in the common schools; such instruction to be given to all pupils, up to and including the fourth grade, of the public schools of this Commonwealth, and to consist of not more than half an hour each week, during the whole term of the school.⁸

Experiment on living animals forbidden.

290. No experiment upon any living creature, to demonstrate in physiology, shall be permitted in any public school of the state.⁹

Monthly reports.

291. The principal or teacher in every school shall certify, in each of his or her monthly reports to the school board, that such instruction has been given in the school under his or her control,¹⁰ and this act shall take effect immediately.¹¹

Physical culture required to be taught.

292. Physical culture, by a regular and progressive course of calisthenics, shall be included in the branches of study now required by law to be taught in the public schools of this Commonwealth.¹²

7. Act March 24, 1905, Sec. 1, P. L. 52.

8. Act March 27, 1905, Sec. 1, P. L. 60.

9. Act March 27, 1905, Sec. 2, P. L. 60.

10. Act March 27, 1905, Sec. 3, P. L. 60.

11. Act March 27, 1905, Sec. 4, P. L. 60.

12. Act March 8, 1901, Sec. 1, P. L. 49.

Duty of school directors, controllers and boards of education.

293. It shall be the duty of the school directors, boards of school controllers, and boards of education of the public schools of this Commonwealth, to make proper provisions in all the schools or districts under their jurisdiction, care and control, for instructions to be given the pupils of said public schools in physical culture, by a regular and progressive course of calisthenics, and any failure on the part of said directors, controllers or boards of education, to comply with the provisions of this act, satisfactorily proven to the state superintendent of public instruction, shall be deemed sufficient cause for withholding the warrant for state's appropriation of school money to which district would otherwise be entitled. Provided, That teachers shall not be required to pass examinations in the branch of study provided in this act until after January first, one thousand nine hundred and two. Provided, That this act apply only to cities of the first and second class.¹³

Suspension and expulsion of pupils.

294. School directors and controllers may suspend or expel from the school all pupils found guilty, on full examination and hearing, of refractory or incorrigibly bad conduct.¹⁴

Power of committee to investigate.

295. This was a petition for mandamus against school directors to compel the restoration of a pupil who had been expelled for incorrigibly bad conduct. The principal of the school made certain charges against the pupil to the school committee of the said board, and the said committee thereupon dismissed the said pupil from the public schools and he was thereafter denied admission to the school by the principal and refused further instruction therein. It is admitted that the expulsion was by a committee of said board, consisting of three members thereof, and not by the board of directors themselves, and no examination nor hearing of the charges was had before the full board.

13. Act March 8, 1901, Sec. 2, P. L. 49.

14. Act May 8, 1854, Sec. 23, P. L. 621.

The matter was brought however to the attention of the full board, and a hearing before them was demanded, which was refused, and the action of the committee was approved and sustained.

In reviewing the case Mr. Justice Potter said, *inter alia*: "Under the act of May 8, 1854, power is given to the board of directors, on full examination and hearing, to suspend or expel from the school all pupils found guilty of refractory or incorrigibly bad conduct. The requirement is that the examination and hearing shall be full, but this does not necessarily mean that it should be by the full board. We see no reason why the investigation of charges and the conduct of a hearing may not be delegated to a committee of the board, when the action of the committee is afterwards reported to, and is reviewed and considered and sustained by the full board."¹⁵

Teachers or school boards may expel pupils.

296. The facts of the case, as they appeared on the trial, were as follows: Hughes, the plaintiff, was at a former time a student at the State Normal School at Edinboro, Erie County, Pennsylvania. For some matter, not very grievous, Prof. Cooper, the principal of the school, expelled Hughes from this normal school, and from all the normal schools of the state, no matter where situated, and for all time to come. Some time after this, and at the close of the term, the Potter Literary Society gave an exhibition, at which all the public were invited to attend. Tickets were sold, and great efforts were made to distribute them and secure a full house. On the evening of the entertainment, Mr Hughes and a lady, with tickets, presented themselves at the hall, and upon the surrender of their ticket were passed in and seated near the centre of the room. Soon after, and about the time the hall was filled, Goodell, Cutler and Langley took Hughes, and by force put him out of the school building, and out of the grounds. Verdict for plaintiff of \$275.00. New trial refused.

15. Miller vs. Clement, 205 Pa. 484, 1903.

In delivering the charge to the jury, Johnson, J. says :

“ While the trustees and directors of our public schools and literary institutions have a qualified title to, and possession of, the real estate dedicated to the use of the public for educational purposes, it does not confer upon them that absolute dominion which a private individual may exercise over the premises of which he is the exclusive and fee simple owner. The public have some right in school house property, and among them the right of entry, at all proper times, and for proper purposes. The rights of trustees and directors of public schools are subordinate to this. The public, means all the citizens within a given distance or district, intended to be benefitted by the purposes to which the premises are devoted.

“ While the teachers or directors may expel a scholar from the school for sufficient reasons, and deprive him of its advantages, it does not follow, by any means, that they can inflict a perpetual personal disability upon the offending student. If he is afflicted with a contagious disease, or possesses such a bad moral character as to endanger the health or pollute the morals of those with whom he comes in contact, he may, from motives of public policy, be excluded from their association.

“ But for a technical violation of school regulations, while he may be expelled from the school, he cannot be further punished by its guardians, by the infliction of disabilities in derogation of his rights as a citizen.

“ The school authorities, of course, have a right to protect themselves and their school from disturbance and annoyances that interfere with the successful prosecution of the purposes for which they are established.

“ They would have a right to exclude from their grounds and buildings any man who would enter them to disturb the peace, or break up the order, or interfere with the legitimate exercises of the school.

“ Beyond that, they could not impose individual restrictions at their own caprice, making discriminations to the exclusion of some from public exhibitions, to which all the

public are invited. This would be invidious, and in violation of the private rights of the individual. Even during the war, peaceable rebels had a right to live in loyal territory, and enjoy the benefits of our literary and religious institutions.

“Now, to say that a student expelled from a school for disobedience to some municipal regulation, should be excluded from attending a prayer meeting or public lecture, in the school house or college premises, for all time to come, without any evidence of improper conduct or suspicion of improper purposes, would be an exercise of tyranny over his private rights, not vested in the trustees, directors or professors of our educational institutions.

“A scholar may forfeit his rights to a place in the school or college by the violation of some rule that involves no moral turpitude. And, so far as appears, that was the condition of this plaintiff. If the rule of right in the professors be as great as is claimed in this case, he might have been sued in trespass or forcibly expelled for attending the funeral of his mother upon the premises ten years after his expulsion.

“It is a mistake to say that the literary society that got up that exhibition, and the exercises of that evening, was a constituent part of the school, or of the prescribed curriculum, or course of its studies. The literary societies are voluntary aspirations among the students, to which they may or may not belong. The exercises are of their own choice, and the exhibition is held at their own volition. It is true, the organization and its exercises are subordinate to, and subject to the supervision of the professors. When they are approved by the professors, and permission is given to the society to use the public hall of the institution for their exhibition, had they the right to say that any individual member of that community should not attend? I think not, unless something in the moral character of that person, or a reasonable apprehension existed that he intended to break the peace or interrupt the exercises of the evening, made it proper, from public considerations, to exclude him.

The question, therefore, is whether the plaintiff had forfeited his rights as a citizen, to be present at the exhibition, to which all the citizens had been invited, and to which he had purchased a passport.

“If he came there to disturb the peace or interrupt the exercises; if he had made previous threats that he would do so, or demonstrations of such intention after entry, he might properly be put out. But in the absence of any such conduct, or evidence of such intention, he had the same right to come there that any other peaceable citizen had. Of this he could not be deprived at the pleasure or caprice of the professor who presided over the destinies of the school. The Potter Literary Society, by permission, had the use of the premises that night, and it had publicly invited all to pay and come. He had so done. His ticket gave him and his lady a passport to the hall, which no one had a right to dispute so long as his conduct was unexceptionable.

“No physical injury was inflicted. The plaintiff was forcibly ejected from the hall, in the presence of a large assembly. The injury consists in the insult and indignity inflicted upon his sensibilities and his honor, and the violation of his personal rights. The plaintiff does not ask high or exemplary damages, but should receive something by way of compensation for the injury he has suffered. This suit is brought rather to settle a disputed question and vindicate his rights, than as a pecuniary speculation.”¹⁶

16. Hughes vs. Goodell, 3 Pitts. R. 264, 1870.

CHAPTER XIII.

LIABILITY OF DIRECTORS AND CONTROLLERS—PAYMENT OF EXPENSES.

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Payment of necessary expenses.

297. Directors and controllers shall pay all necessary expenses of the schools by drafts on the district treasurer, signed by the president, and attested by the secretary of the board, the same being entered on the minutes.¹

Directors have no authority to pay pupil's board.

298. The payment of the board of a pupil by school directors from public funds is unauthorized by law and illegal and will be restrained by injunction.²

School orders or warrants are not negotiable.

299. Orders drawn by a president of a board of school directors on the treasurer of a school district, under the school law, are not negotiable bills or orders, but mere warrants for the payment of money to the person to whom they are issued, to be disbursed by the treasurer under the authority of the law: they, therefore, do not authorize a subsequent holder to maintain suit in his own name, as upon a promissory note or order. They do not possess the ordinary properties of a mere contract, but are a statutory means of drawing the public money out of the hands of the legal custodian of the funds of the district.

First National Bank of Northumberland vs. Rush School District, 81 Pa. 307, 1876.³

1. Act May 8, 1854; Sec. 23, P. L. 621.

2. Peiffer vs. Reno, 29 Pa. C. C. 145, 1904.

3. Dyer vs. Covington, 19 Pa. 200, 1850.

School boards not authorized to purchase drafts or commercial papers.

300. Justice Paxton said : "The act of assembly authorizing them to borrow money and issue bonds therefor on the credit of the district would hardly authorize them to purchase drafts or commercial paper and issue the bonds of the school district in payment therefor. It would be an extremely dangerous doctrine to hold that municipal officers authorized by an act of assembly to borrow money upon the credit of the municipality, could issue the bonds of such municipality for anything but money."⁴

School directors personally liable.

301. In this case Robert Linn was a member of the board of school directors, and also treasurer of the school district. Samuel M. Kenyon, who had charge of the Savannah school house, or school house No. 9, was discharged as teacher by resolution of the board the 28th of February, 1857. It appears that after his discharge as a teacher by the school board, he continued to teach at the same place at the instance of those who had sent their children to this school, and with the understanding, that if he was not paid by the school directors, those who sent their children to the school would pay for their tuition. On the 25th of April, 1857, there was a resolution introduced to pay Kenyon for tuition after he had been discharged, which was lost by a tie vote. On the 29th of August, 1857, there was a resolution offered to reinstate the Savannah school house where Kenyon had taught, which was again lost by a tie vote. Again, on the 26th of March, 1858, another resolution was introduced to pay Kenyon, which was again lost by a tie vote. The school board of 1857 appear to have been equally divided on the question of paying Kenyon, and it appears to have been frequently agitated and brought to the notice of the board, and resulted in an equal division, until after the spring election of 1858, when the subject was again brought before the board of directors, and on the 5th of June, 1858, a resolution was passed to reinstate Samuel M. Kenyon as a

4. Muncy Borough School District vs. Com., 84 Pa. 469, 1877.

teacher in the Dickinson district, and to pay him his salary for teaching at the Savannah school house for five months. This resolution was carried by a vote of 3 to 2, Mr. Linn voting in the affirmative. On the same day, as appears from the minutes of the board, an order on the treasurer was drawn in favor of Kenyon for \$125.00, in due form, signed by the president and attested by the secretary. This order, thus drawn under the circumstances we have stated, the township alleges was illegal, and ought not to have been paid by the treasurer of the school board ; that the township auditors erred in passing this order to the credit of the treasurer, and this appeal from their settlement has been entered to correct this alleged error.

Chief Justice Lowrie said : “ Undoubtedly this teacher had no right to be paid out of the public funds, except for the time he was in the public employment ; and the directors had no legal authority to pay him ; otherwise, they did it to their own wrong, and each director who voted for it is personally liable to the township. They had no right thus to deal with trust funds. They are in no proper sense legislators ; but officers under the law, and obliged to obey it. Even a majority of the voters of the township could invest them with no authority to set aside the law of their office.

Then, as to the defendant, the treasurer : is he liable for paying the order, as for a mispayment ? As director he voted for the misapplication of the money, and as treasurer he paid it ; and he is now called upon, as treasurer, to account for it. Can he, as treasurer, shield himself behind himself as director ? Can he, as treasurer, take advantage of his own wrongful act, as director, to save himself from liability ? May he excuse an unlawful application of public funds, by showing a warrant which he himself unlawfully assisted in issuing ? We are very clear that he cannot. Certainly it is true, that he must pay the warrants of the directors, and is not answerable for their errors. Yet, it is also true that when he, as treasurer, becomes subordinate to himself as director, he can have no moral or legal right to protection as subordinate, by pleading his own lawful act as

superior. When the same man is both superior and subordinate, the maxim 'respondent superior' furnishes no protection to the subordinate. A treasurer cannot claim credit for payment of a warrant illegally issued, if he himself aided in its issue. School directors cannot make law, and have none of the immunities of supreme legislators. Like other trustees, they are answerable for ordinary care and good faith in the performance of their duties.⁵

Liable for unlawful settlement with tax collectors.

302. If school directors make an unlawful settlement with a tax collector, the directors will, themselves, be liable personally to the district for the loss. The settlement with tax collectors must be submitted to the auditors annually for approval.⁶

5. The Township of Dickinson vs. Linn, 36 Pa. 431, 1860.

6. Mason vs. Caffrey, 9 Kulp 414, 1899.

CHAPTER XIV.

SCHOOL SITES.

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Power of school directors or controllers to enter upon and occupy sufficient ground for school sites.

303. Whenever the board of directors, or controllers of of any school district in this Commonwealth, shall be unable to procure such eligible sites, for the erection of school houses thereon, as they may deem expedient, by agreement with the owner or owners of the land, it shall and may be lawful for the board of directors, in behalf of the district, to enter upon and occupy sufficient ground for the purpose, which they shall designate, and mark off, not exceeding, in any case, one acre, and to use and occupy the same, for the purpose of erecting thereon a school house, with its necessary or convenient appurtenances ; and for all damage done and suffered, or which shall accrue to the owner or owners of such land, by reason of the taking of the same, for the purposes aforesaid, the funds of the district, which may be raised by taxation, shall be pledged and deemed as security ; and it shall and may be lawful for the court of common pleas of the proper county, on application thereto, by petition, either by the said school district, through the president and secretary of the board of directors, or by the owner or owners of said land, or any one of them, in behalf of all, to appoint a jury of viewers, consisting of three discreet and

disinterested citizens of said county, who shall not be the owners of property or residents in the school district in which such land is taken, as aforesaid, and appoint a time not less than twenty nor more than thirty days thereafter, for said viewers to meet upon said land; of which time and place ten days' notice shall be given by the petitioners, to the said viewers and the other party; and the said viewers, or any of them, having been first duly sworn or affirmed, faithfully, justly and impartially to decide, and a true report to make, concerning all matters and things to be submitted to them; and having viewed the premises, they shall establish and determine the quantity and value of said land so taken, to be used for the purposes aforesaid, and after having made a fair and just computation of the advantages and disadvantages, they shall estimate and determine whether any, and if any, what amount of damages has been or may be sustained, and to whom payable, and make report thereof to said court; and if damages be awarded and the report be confirmed by the said court, judgment shall be entered thereon; and if the amount thereof be not paid within thirty days after the entry of said judgment, execution, to enforce the collection thereof, may be issued as in other cases of judgment against school districts; and each viewer shall be entitled to one dollar and fifty cents per day, for every day necessarily employed in the performance of the duties herein prescribed, to be paid by such district: Provided, That either party shall have the right to have re-viewers appointed by said court.¹

Sites for school houses.

304. The word "ground" in the act of April 9, 1867, Sec. 1, is synonymous with "land," and is not confined to such only as is bare for buildings. School directors may enter upon and occupy improved town lots. When a school district owns a lot, the directors may take beside, as much adjoining ground as is necessary for a site for a school house, if both together do not exceed one acre.²

1. Act April 9, 1867, Sec. 1, P. L. 51.

2. Ferree vs. the Sixth Ward Dist. of Allegheny, 76 Pa. 376, 1874.

The school directors have the authority to condemn land for the purpose of enlarging school property upon which a school house is already erected.³

Location of school houses.

305. Mr. Justice Williams said :

“The subject of the controversy in this case is the location of a district school house. Reduced to its simplest terms the question raised is whether the exercise of official discretion of a board of school directors shall be supervised and directed by a court of equity. If so, the selection of teachers and text books, the fixing of the rate for the levy of school and building taxes, the arrangement of the course of study, together with other similar duties, will be hereafter done subject to the opinion of the courts. The administration of the school laws will in that case depend on the discretion of a chancellor, whose decrees will be enforced by injunction or mandatory order. Such a conclusion would do violence to the school laws, and to the well settled rules that fix the limits of official discretion. If an officer neglects or refuses to enter upon the discharge of a duty which the law imposes upon him, the courts will quicken or compel action by a writ of mandamus. If he goes beyond what the law requires, attempts that which is *ultra vires*, or abuses his discretion in any manner, the courts will restrain him by injunction. The ground intermediate these extremes is the legitimate range of official discretion, within which the officer, on whom the law has cast a duty, may determine the manner of its performance: *Commonwealth vs. Cochran*, 1 S. & R. 473; *School Directors vs. Anderson*, 45 Pa. 388; *Schlaudecker vs. Marshall*, 72 Pa. 200; *Dechert vs. Commonwealth*, 113 Pa. 229; *Runkle vs. Commonwealth*, 97 Pa. 328. In the case of school directors who neglect or refuse to perform an official duty, the court of quarter sessions has a summary jurisdic-

3. *Springboro School District's Case*, 21 Pa., C. C. 23, 1852.
Thompson vs. East Marlborough School Dist., 1 Ches. 493, 1874.

tion and may remove them from office and appoint others to fill their places. For an abuse of discretion or an act contrary to law, the remedy is in the common pleas. But for a mistake in judgment as to the time or manner of performance of their official duties they are answerable to the constituency that elects them. They must act—their action must be within the legal limits that bound their powers. If they refuse to act, or go beyond the fair exercise of their discretion, the courts can exercise control over them. If neither of these conditions exist, but they proceed to the discharge of their duties, exercising their official discretion as to the manner, the courts cannot interfere.

“But the learned counsel for the appellants seeks to induce action in this case by suggesting that a question of public health is involved. The bill alleges that the new location is less salubrious than the abandoned one, because more exposed to the winds of winter, and that pupils may suffer in health for this reason. It is more than doubtful whether the danger thus suggested is so obvious as to justify an exercise of the police powers in order to avert it, even if the fact was admitted to be as alleged. But it is distinctly denied in the answer before us. There is nothing in this case therefore to prevent the application of the general rule already stated.”⁴

Review by the courts.

306. When a school board has made a selection for a location for a school house which was not the best place that might have been procured, the court will not interfere unless the directors acted arbitrarily, beyond reason, or unless they were dishonest or had improper motives in making such selection.⁵

Report of viewers.

307. The Court said :— “It is not necessary that the report of viewers in proceedings under the act of April 9th, 1867, P. L. 51, authorizing the selection of sites for school

4. Roth vs. Marshall, 158 Pa. 272, 1893.

5. Conney vs. Gardner, 16 Pa. C. C. 547, 1895.

houses, be signed by all the viewers, a majority being sufficient to act.⁶

School board acquires no fee.

308. Under the Act of April 9, 1867, P. L. 51, a school board acquires an easement only, and not a fee in land condemned, and when the land is abandoned for school purposes its use and occupation reverts to the owner of the fee, nor can the board under the right of eminent domain acquire title to the land by adverse possession, or by prescription.⁷

Power to discontinue proceedings under Act April 9, 1867.

309. Proceedings under the Act may be discontinued at any time before final confirmation of proceedings, or the taking of actual possession of land.⁸

Certain land owned by county may be taken for educational purposes.

310. Whenever any county shall have had, or may hereafter have, land conveyed to it, for its use, or to be appropriated to the public buildings thereof and for educational purposes, and there shall be more of such land than is necessary to be used and occupied for such public buildings, and more of such land than is so used and occupied, it shall and may be lawful for the directors or controllers of any school district to enter upon and occupy sufficient of such land for the erection of a public school house or houses, and to use and occupy the same for the purpose of erecting, and to erect thereon a public school house or houses with the necessary or convenient appurtenances.⁹

Damages, how secured.

311. For all damages done or suffered, or which shall accrue to the county holding or owning such land, by reason of the taking of the same for the purposes aforesaid, the funds of the district taking such land, which may be raised by taxation, shall be pledged and deemed as security.¹⁰

6. Jackson Township School District, 11, York, 15.

7. *Lazarus vs. Morris*, 29 Pa. C. C. 505, 1904.

8. *Funk vs. Waynesboro School District*, 3, Sadler Rep. 177, 1886.

9. Act April 4, 1889, Sec. 1, P. L. 25.

10. Act April 4, 1889, Sec. 2, 1, P. L. 25.

Court of quarter sessions to appoint viewers. Duties of viewers.

312. It shall and may be lawful for the court of quarter sessions of the county wherein such land is situate, upon the petition either by the school district through the principal officer or officers thereof, or by the county holding or owning such land, through the principal officer or officers thereof, to appoint a jury of viewers, consisting of three disinterested citizens, not residents of nor owners of property in the county or district in which such land is situate, and to fix a time, within sixty days thereafter, for said viewers to meet upon said land, of which time and place of meeting not less than ten days notice shall be given to the said viewers and to the other party, by the petitioners, and the said viewers or any of them, having been first duly sworn or affirmed, faithfully and impartially to decide, and a true report to make, concerning all matters and things to be submitted to them; and having viewed the premises, shall establish and determine the quantity and value of such land so taken and to be used for the purposes aforesaid, and after having made a fair and just computation of the advantages and disadvantages, they shall estimate and determine whether any, and if any, what amount of damage has been or may be sustained, and to whom the same is payable, and make report thereof to the said court. And if damage be awarded and the report be confirmed by the said court, judgment shall be entered thereon, and if the amount thereof be not paid within ninety days after the entry of said judgment, execution may be issued to enforce the collection thereof, as in other judgments against school districts. Each viewer shall be entitled to three dollars for every day necessarily employed, and five cents for each mile circular necessarily traveled, in the performance of the duties herein prescribed to be paid by said district.¹¹

Power of the school board to take public burial places.**School directors may appropriate burial grounds for school purposes.**

313. Whenever the board of directors or controllers of of any school district in this Commonwealth shall deem it

11. Act April 4, 1889, Sec. 3, P. L. 25.

desirable to occupy for purposes of common school education, either for the erection of public school houses or of other buildings used or to be used for public school purposes, or for play-grounds, connected with or belonging thereto, or of extending play-grounds, or of improving the sanitary conditions of any school property or for other school district purposes, any grounds therein used as a public burial place, or which may heretofore have been used as such, or which was or may have been conveyed to or otherwise vested in fee, or for any other estate or trust in any municipal body or corporation as or for a public burial place, such school board may, by resolution passed by the affirmative vote of at least four-fifths of all the members thereof and duly enter on the minutes, declare its intention to take, use and occupy the same for the purpose or purposes aforesaid, designating the same in said resolution by metes and bounds: Provided, No more than one-half acre of ground shall at any one time be so taken or occupied: Provided further, however, That in cases where such cemetery or burial ground has ceased to be used as such, or where no interment has been made therein for a period of twenty years preceding the time at which such board of school directors or controllers desires to take possession thereof for the purposes aforesaid, one acre of ground may be taken and appropriated, used or occupied as aforesaid: And provided further also, That this act shall not apply to burial grounds belonging to religious societies, churches or congregations or to private corporations or associations, nor to such portions thereof as are devoted to public use or for the burial of the poor, nor to burial grounds on or connected with almshouse properties.¹²

Court of common pleas to appoint viewers. Duties of viewers.

314. After the passage of said resolution, the court of common pleas of the proper county shall, on application of said board through its president, appoint three discreet citizens of the county in which said school district is located as viewers to view and ascertain the damages done, and likely to be done, by reason of such taking, use and occu-

12. Act June 25, 1895, Sec. 1, P. L. 291.

pancy, and shall appoint a time, not less than thirty nor more than sixty days thereafter, for said viewers to meet at or upon the premises so to be taken, used and occupied, of which time and place notice shall be given by said board of said viewers and to all parties interested, by publication for four successive weeks prior to the day of meeting, in not more than four nor less than two newspapers published in said county. The said viewers or any two of them having been first duly sworn or affirmed faithfully, justly and impartially to decide and a true report to make concerning all matters and things submitted to them, and in relation to which they are authorized by law to inquire, and having viewed the premises shall establish and determine the quantity of said land so to be taken, used and occupied for the purposes aforesaid, and after having made a fair and just comparison of the advantages and disadvantages, they shall estimate and determine whether any, and if any, what amount of damages has been and seems likely to be sustained by reason of such taking, use and occupancy, and to whom payable, and make report thereof to said court; and if damages be awarded and the report be confirmed by the said court, judgment shall be entered thereon and execution to enforce the collection thereof may be issued as in other cases of judgment against school districts, and each viewer shall be entitled to two dollars per day for every day necessarily employed in the duties herein prescribed, to be paid by the school district.¹³

Appeal from report of viewers.

315. Upon the report of said viewers or any two of them being filed in said court, any party interested may, within thirty days thereafter, except to the same, or file his, her, its or their appeal from the same to said court. Such appeal shall be in writing and accompanied by an affidavit of the appellant, or his, her, its or their agent, chief officer or attorney, that the same is not taken for the purpose of delay, but because the affiant firmly believes that injustice has been done; after such appeal either party may put the

13. Act June 6, 1893, Sec. 2, P. L. 342.

cause at issue in the form directed by said court, and the same may be tried by said court and a jury, and said proceedings shall be with the same right of appeal to the Supreme Court as in other cases.¹⁴

Procedure.

316. After the damages so finally determined upon, if any there be, shall have been paid to the parties in whose favor they are adjudged, or to the persons legally entitled thereto, such school district may, by its board of directors or controllers as the case may be, or by any person, contractor, agent, employe or officer thereto authorized by said board, enter upon, take, use and occupy such ground and erect building thereon, and do all things necessary and convenient for the purposes aforesaid: Provided, That before entering upon, using or occupying the same, four weeks' notice shall be given by the board by publication in manner hereinbefore set forth, within which time any person having any relative or kindred buried in such burial place may designate where the same are buried and make demand upon said board, or the president thereof, that the remains of such relative or kindred be removed therefrom and separately interred elsewhere and marked with substantial stones with appropriate inscriptions thereon at the proper expense and charge of said school district, which said demand shall be complied with before the commencement of the erection of any building on said grounds, and said school district shall, if necessary, purchase other land not more than twice the amount so to be taken for the purpose of re-interring therein the remains of persons buried in the ground to be taken, and all remains, so far as they can be found, shall be removed to the grounds so purchased, or elsewhere, and interred in an orderly and decorous manner at expense of said district, and any grounds so purchased may thereafter be used as a public burial place in like manner as the property taken: Provided, That if any party in interest (other than such school district) appeal from the report of said viewers to the court as hereinbefore

14. Act June 6, 1893, Sec. 3, P. L. 342.

provided for, it shall nevertheless be lawful for such board of school directors or controllers to file in court the bond or obligation of such school district, in such form and in such amount as said court may approve, for the use of such appellant, conditioned for the payment unto such appellant of all damages that may ultimately be adjudged unto the appellant, and also for the payment of all costs that may be adjudged against such school district, and upon the approval and filing of such bond the said school district, by its board of directors or controllers, may forthwith have, exercise and enjoy all the rights and privileges and do and perform all things to be done in the premises as herein above directed, the same as if final judgment had been rendered in the cause and as if all damages were fully paid.¹⁵

15. Act June 25, 1895, Sec. 4, P. L. 291.

CHAPTER XV.

SCHOOL HOUSES.

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Buildings for school purposes.

317. School directors and controllers shall cause suitable lots of grounds to be procured, and suitable buildings to be erected, purchased or rented for school houses, and shall supply the same with the proper convenience and fuel.¹

Purpose of plans and specifications of school houses.

318. Whereas, it is of great importance to the people of this Commonwealth that public school buildings, here-

1. Act May 8, 1854, Sec. 23, P. L. 621.

after erected by any board of education, school trustees or school directors, shall be properly heated, lighted and ventilated.²

School houses.

319. In order that due care may be exercised in the heating, lighting and ventilating of public school buildings hereafter erected, no school house shall be erected by any board of education or school district in this state, the cost of which shall exceed four thousand (\$4,000.00) dollars, until the plans and specifications for the same shall show in detail the proper heating, lighting and ventilating of such building.³

Lighting.

320. Light shall be admitted from the left or from the left and rear of class rooms, and the total light area must, unless strengthened by the use of reflecting lenses, equal at least twenty-five per centum of floor space.⁴

Class rooms. Air Space.

321. School houses shall have in each class room at least fifteen square feet of floor space, and not less than two hundred cubic feet of air space per pupil, and shall provide for an approved system of indirect heating and ventilation, by means of which each class room shall be supplied with fresh air at the rate of not less than thirty cubic feet per minute for each pupil, and warmed to maintain an average temperature of seventy degrees Fahrenheit during the coldest weather.⁵

Protection of school property of cities and boroughs. School boards may permit use of grounds for recreation purposes.

322. It shall be lawful for the ward or sub-district school boards, as well as for the central boards of education or of school controllers or directors in the several cities

2. Preamble to Act April 22, 1905, P. L. 282.

3. Act April 22, 1905, Sec. 1 P. L. 282.

4. Act April 22, 1905, Sec. 2, P. L. 282.

5. Act April 22, 1905, Sec. 3, P. L. 282.

and boroughs of the Commonwealth, to permit the use of the school grounds under their jurisdiction for park and recreation purposes by the public.⁶

Care and protection.

323. It shall be lawful for all such ward or sub-district school boards and central boards of education, or of school controllers or directors in the several cities and boroughs of the Commonwealth, to make arrangements with the city or borough authorities for the enlargement, improvement, care and protection of the school grounds when used for park and recreation purposes by the public, and power is hereby conferred upon such city and borough authorities to make such expenditures as may be necessary to carry such arrangements into effect.⁷

May lease or permit use of grounds.

324. The said city, borough and school authorities are hereby empowered to make similar arrangements with corporations, societies, associations or individuals having property which they are willing to donate, lease or permit the use of for public park or recreation purposes, and said city and borough authorities are also empowered hereby to make all expenditures necessary to make such arrangements effective.⁸

Protection of school houses.

325. If any person shall wilfully and maliciously break or enter any public school house, public school building or other building used for public school purposes, or any out house used in connection therewith, or shall injure, damage or destroy any school furniture, books, papers, maps, charts or apparatus contained in any public school house or other building used and occupied for public school purposes, he shall be guilty of a misdemeanor, and upon conviction thereof shall be sentenced to pay a fine not exceeding one hundred dollars, or undergo an imprisonment

6. Act June 26, 1895, Sec. 1, P. L. 331.

7. Act June 26, 1895, Sec. 2, P. L. 331.

8. Act June 26, 1895, Sec. 3, P. L. 331.

in the county jail for a period not exceeding six months, or either, or both, at the discretion of the court.⁹

Use of school houses for literary purposes.

326. It shall be lawful for school boards to grant the use of school houses for lyceum and other literary purposes, non-sectarian, in their respective districts.¹⁰

School boards may purchase United States flag.

327. The board of education or the board of school trustees in the several cities, towns, townships, boroughs, villages and school districts of this state, may purchase a United States flag, flag-staff and the necessary appliances therefor, and shall display said flag upon, near or in the public school building during school hours, and at such times as the said board may deem proper; and that the necessary funds to defray the expenses to be incurred herein shall be assessed and collected in the same manner as moneys for public school purposes are now raised by law.¹¹ and this act shall take effect immediately.¹²

Fire escapes.

328. All the following described buildings within this Commonwealth, to be provided with permanent, safe external fire escapes, to wit:—

Every building used as a sanitary, college, academy, hospital, asylum, or hotel for the accommodation of the public, every storehouse, factory, manufactory, or workshop of any kind in which employes or operatives are usually employed at work in the third or any higher story, every tenement house or building in which rooms or floors are usually let to lodges or families, every public hall or place of amusement, every parochial or public school building, when any of such buildings are three or more stories in height, shall be provided with a permanent, safe external means of escape therefrom, in case of fire independent of all internal

9. Act May 19, 1897, Sec. 1, P. L. 76.

10. Act April 11, 1901, Sec. 1, P. L. 78.

11. Act July 9, 1897, Sec. 1, P. L. 233.

12. Act July 9, 1897, Sec. 2, P. L. 233.

stairways; the number and location of such escapes to be governed by the size of the building, and the number of its inmates, and arranged in such a way as to make them readily accessible, safe and adequate for the escape of said inmates. Such escapes to consist of outside, open, iron stairway, of not more than forty-five degrees slant, with steps not less than six inches in width and twenty-four inches in length.¹²

Examination and approval of fire escapes.

329. It shall be the duty of the board of fire commissioners in conjunction with the fire marshal of the district where such commissioners and fire marshal are elected or appointed, to first examine and test such fire escape or escapes, and, after upon trial said fire escape or escapes should prove to be in accordance with the requirements of section one of this act, then the said fire marshal, in connection with the fire commissioners, or a majority of them, shall grant a certificate approving said fire escape, thereby relieving the party or parties to whom such certificate is issued, from the liabilities of fines, damages and imprisonment imposed by this act: Provided, further, That in counties where no such fire marshals or fire commissioners exist, then the county commissioners in each said county shall be the board of examiners and shall grant certificates of approval when escapes are erected in accordance with the requirements of section one of this act.¹³

Criminal liability for neglect of duty.

330. That every person, corporation, trustee, board of education, and board of school directors, neglecting or refusing to comply with the requirements of section one of this act, in erecting said fire escape or escapes shall be liable to a fine not exceeding three hundred dollars, and also be deemed guilty of a misdemeanor punishable by imprisonment for not less than one month, or more than two months. And in case of fire occurring in any of said buildings in the absence of such fire escape or escapes, ap-

12. Act June 3, 1885, Sec. 1, P. L. 68.

13. Act June 3, 1885, Sec. 2, P. L. 68.

proved by certificate of said officials, the said person or corporations shall be liable in an action for damages in case of death or personal injuries sustained in consequence of such fire breaking out in said building, and shall also be deemed guilty of a misdemeanor punishable by imprisonment for not less than six months, nor more than twelve months ; and such action for damages may be maintained by any person now authorized by law to sue as in other cases of similar injuries : Provided, That nothing in this act shall interfere with fire escapes now in use approved by the proper authorities.¹⁴

Water closets. Number and arrangement for each school.

331. Boards of school directors and controllers shall provide suitable and convenient water closets for each of the schools under their official jurisdiction, not less than two for each school or school building where both sexes are in attendance, in their respective school districts, with separate means of access for each, and unless placed at a remote distance one from the other, the approaches or walks thereto shall be separated by a substantial, close fence, not less than seven feet in height, and it shall be the duty of the directors or controllers to make provisions for keeping the water closets in a clean, comfortable and healthful condition.¹⁵

Removal of directors for failure to comply with the requirements.

332. Any failure on the part of school directors or controllers to comply with the provisions of this act shall make them liable to be removed from office by the court of quarter sessions of the county in which the schools are located, upon complaint made to the court, under oath or affirmation, of not less than five taxable citizens resident in the school district in which the school is located.¹⁶

14. Act June 3, 1885, Sec. 3, P. L. 68.

15. Act June 6, 1893, Sec. 1, P. L. 339.

16. Act June 6, 1893, Sec. 2, P. L. 339.

Houses must be separate.

333. Separate apartments under the same roof will not be sufficient, but separate houses for each sex, placed as far apart as possible must be provided by the directors and properly cared for as the law expressly requires.¹⁷

Duties of school directors and controllers to remove excrement and waste matter.

334. The boards of school directors and controllers of each school district of this Commonwealth, be and they are hereby required, at least once during each full school term, and prior to the first of January of each year, and within thirty days after the close of each annual school term, to have taken out, removed and hauled away all excrement and waste matter from every outhouse or water closet connected with or standing upon the premises of every public school house in the Commonwealth, or have the same properly disinfected; and they are required to have every outhouse or water closet properly scrubbed, washed out and cleaned, the inside walls whitewashed, and the vaults or receptacles covered with a layer of fresh dirt or dry slacked lime within ten days of the opening of each annual school term.¹⁸

Duty of the President.

335. The president of each board of school directors or controllers is required each year to certify, in the regular form provided for that purpose, that the requirements of this act have been fully carried out before the district can draw its annual appropriation from the state.¹⁹

The duty imposed upon directors is mandatory.

336. The petitioners ask for the removal of the school directors of Lower Salford Township for failure to comply with the provisions of the Acts of June 6, 1893, P. L. 339, and June 24, 1895, P. L. 254. The first named act requires the outhouses to be separated by close fences not less than

17. School Laws and Decisions, Page 117, 1903.

18. Act June 24, 1895, Sec. 1, P. L. 254.

19. Act June 24, 1895, Sec. 2, P. L. 254.

seven feet in height, and that the water closets shall be kept in a clean, comfortable and healthy condition; the second act also provides for the cleansing, etc., of the closets. For a failure to comply with the act of 1893 the directors are liable to be removed; and unless the president of the school board certifies that the requirements of the act of 1895 have been fully carried out, the state appropriation cannot be drawn by the district.

There can be no doubt that neither act has been complied with according to the spirit and intent of the law, and we would under the testimony be fully justified in removing the directors. The duty imposed on the officers is mandatory, and no one can question the propriety of the law which imposes these duties. They are necessary for the health, comfort and morals of the children who attend the schools. We, however, recognize the fact that the respondents are respectable citizens who have not wilfully neglected their duties as they understood them, but have erred because of their ignorance of the law. They are thus liable to be removed; but the court is not compelled to impose removal where it is satisfied that the neglect was merely a mistake of judgment. Their willingness to abide by the order of the court and their action since their attention has been called to the matter, justify us in the conclusion that now that their attention has been called to the requirements of the law that there will be no further reason for complaint on these grounds.

We are convinced that the so-called "fence" is in no sense what is intended or required. The law reads: "The approaches or walks thereto (outhouses) shall be separated by a substantial close fence not less than seven feet in height." We cannot by general terms say what is meant by "the approach or walk" so as to apply to all cases. Much may depend upon the shape and size of the lot, the distance from school to outhouse, the location of the buildings, etc. In some cases to build a fence from school to outhouse may entirely destroy the lot as a playground, and in others it might require a removal of buildings or the purchase of more ground. In each case there ought at

least to be a substantial compliance with the words of the law—sufficient to separate the sexes in going to and fro. In the case in hand a mere screen in front of the door amounts to nothing; and when the law says seven feet, six feet is not a compliance, but an evasion. Where the ground will admit of so doing, the safer plan is to have the whole walk separated; or where the removal of the outhouse or the building of an additional one will enable the walk to be separated, this should be done. As we have already stated, we cannot decide all the cases in advance, and only make these suggestions as rules which may enable the directors to fulfill their duties. It is unnecessary to say anything further in relation to the condition of the outhouses. They must be kept clean and in good repair, and further neglect on this score will not be overlooked. School directors when they assume office have a duty to the public which requires them to visit the schools and to inquire into the condition of the grounds and buildings. This is not to be left to the teacher. It is a duty incumbent on the director, and unless he is willing to attend to it he should resign or be removed. A neglect of duty may cause the withholding of the state appropriation, and result in closing the schools for want of funds. Directors who would risk such a result are unworthy of the trust reposed in them.

Complaint is also made because of the employment of an improper person as teacher. But we are unwilling to interfere with the discretion imposed on the directors in this matter. The teacher received a certificate from the county superintendent after his attention had been called to the matter, and there does not appear to have been any recent acts of impropriety by the party to whom reference is made. If the school board are satisfied to have their own children sit under such a man, we must assume that they have confidence in him.

The last complaint is one over which we have no control except in a plain case of abuse of discretion. The directors must be vested with authority to decide as to the number of pupils to be assigned to a school, and also which

school the pupil is to attend. No unjust discrimination is apparent in this case, although we think it would have been a charitable and humane act, considering the physical condition of the boy, to have listened to the father's request. The interest of the child is more to be considered than any feeling of opposition to the parent.

We are impressed with the idea that this case will be productive of good by calling the attention of directors in this and other townships to the provisions of the law claimed to have been violated. We do not think that there have been any wilful violations, but that in some cases there has been too much indifference shown by the directors, who fail to realize that their duties are active and require more from them than merely to meet periodically to elect teachers, etc.²⁰

Power of school board to contract for water supply. Term of contract.

337. The school boards of the several townships or school districts within this Commonwealth, shall have full power and authority to contract with any person, company or association to furnish the said township or district with a sufficient supply of water for protection from fire or for sanitary purposes for a period not exceeding three (3) years, and to locate and erect fire plugs in close proximity to the school buildings.²¹

Payment of costs.

338. The school boards as aforesaid shall make a record of such contract as they may enter into, including the cost thereof, which they are hereby authorized to pay out of any funds in the treasury not otherwise appropriated.²²

Bills shall be audited.

339. The township auditors shall pass upon such bills, and their action thereon shall have the same effect as upon other expenditures of such school boards.²³

20. School Directors of Lower Salford Township, 19 Pa. C. C. 264, 1897.

21. Act June 24, 1895, Sec. 1, P. L. 245.

22. Act June 24, 1895, Sec. 2, P. L. 245.

23. Act June 24, 1895, Sec. 3, P. L. 245.

Power of school boards to approve bond of contractors.

340. The approval of the bond of a bidder for the erection of a school building is entirely within the discretion of the board of school directors, and the court has neither the power nor inclination to interfere with the exercise of that discretion, except in cases of gross abuse of it. The members of a school board are as well, and in most cases better, able to determine the sufficiency of a bond than the court.

If they have any doubt about the sufficiency of a bond offered for their approval, it is their duty to the public to refuse to approve it, and if it is an honest doubt, it is not material whether it is well founded or not.²⁴

Void contracts.

341. A contract made between a corporation and a board of school directors to build a school building is illegal and void if a member of the school board is also a stockholder in the corporation, such contract being in violation of sec. 66 of the Act of March 31, 1860.²⁵

Authority to contract.

342. Parties dealing with the officers of a school board are bound to inform themselves as to the right and authority of such officials to bind the district in making contracts for supplies.²⁶

Awarding contracts.

343. School directors are not required to advertise for bids for the erection of school houses, or to award the contract to the lowest responsible bidder.²⁷

Not required to take bids for heating.

344. It was held that a school board is not required to take bids before letting a contract for heating a school house, but may let the contract in any manner it may deem proper if this discretionary power is not abused.²⁸

24. *Fritchey vs. School Directors*, 19 Pa. C. C. 388, 1897.

25. *Elmwood Lumber Co. vs. Frey*, 19 Pa. C. C. 56, 1897.

26. *Rutledge vs. McCue*, 10 Kulp 57, 1900.

27. *Taylor vs. School District*, 4 Lack. Leg. N. 231, 1898.

28. *Zies vs. Latimer*, 28 P. L. J. 366, 1898.

Unrecorded acts not void.

345. At a meeting of the board of school directors, 22d September, 1849, the directors, being all present, unanimously authorized and directed Thomas Templeton, president of the board, to enter into an article on behalf of the directors, with John McBride for the building of a school house in the township.

In pursuance of those instructions, Thomas Templeton, as president, and on behalf of the board of directors, made an agreement in writing, under seal, with the said John McBride, to build for the plaintiffs a school house, in the said township, as specified therein, and to finish it in May, 1850, for which the directors were to pay him \$220.00. The article was lost, but it was testified that it was signed by the president of the board of school directors, and by McBride, with a seal to each name. McBride built the house, and the directors having paid him the whole amount of the consideration, except about \$20.00, brought this suit to recover damages, both on account of defective materials and defective work.

The lower court instructed the jury that the recorded minutes of the school directors were the only evidence of their acts, and that their acts, as a board, could not be proved by parol.

On appeal Supreme Court reversed the judgment and awarded a new trial. Justice Lowrie said :

“In *School Directors vs. Cline* we held that school directors ‘are a public body, bound to keep a record of their proceedings, and all their acts should appear on record,’ and this is true : but this is not a declaration that their unrecorded acts are void. It indicates the duty of the directors to their constituents, and not to those with whom they are contracting—a duty the neglect of which may be of serious consequence to the district or to the directors themselves, but upon which contractors with the directors do not rely, and by which they are not intended to be affected, and to the neglect of which they cannot object.”

“The administration of the public business relating to roads, poor, and schools, can always be best performed by township officers ; and, unaccustomed as many of them are to the forms of conducting the business of public bodies, their acts must be treated as valid when found to be the result of joint consultation, even though the form of recording them has been omitted.” ²⁹

29. School Directors vs. McBride, 22 Pa. 215, 1853.

CHAPTER XVI.

INDEBTEDNESS.

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School board may borrow money.

346. For the purpose of erecting school houses or purchasing ground whereon to erect school houses, it shall be lawful for the directors or controllers of any district to borrow money at a rate of interest not exceeding six per centum, and issue bonds therefor in sums of not less than one hundred dollars each.¹

Amount of indebtedness limited by the constitution.

347. The debt, of any county, city, borough, township, school district, or other municipality or incorporated district, except as herein provided, shall never exceed seven per centum upon the assessed value of the taxable property therein, nor shall any such municipality or district incur any new debt, or increase its indebtedness, to an amount exceeding two per centum upon such assessed valuation of property, without the assent of the electors thereof, at a public election in such manner as shall be provided by law.²

1. Act May 8, 1854, Sec. 12, P. L. 617.

2. Constitution of Penna., Art. IX., Sec. 8.

No matter how small the excess over the constitutional limitation, the increase shall be restrained.

348. "Defendants claim that the margin is so small and insignificant that the right of the plaintiffs to an injunction is at best doubtful on their own showing; but we hold that once it is clearly shown a school district has increased its indebtedness beyond the constitutional limitation an injunction must be allowed. Whether the excess is \$100.00 or \$1,000.00 or more makes no difference." ³

Without an election, decree of court authorizing indebtedness over two per cent. is null and void.

349. A decree of court authorizing a school district to borrow money to an amount increasing its indebtedness more than two per cent. upon the valuation of the property, without the assent of the electors, being void, equity will enjoin the performance of a contract entered into for the purpose of building a school house with the proceeds of such loan.⁴

Not a violation of the constitution whereby adjusting indebtedness between new and old district an indebtedness exceeding two per cent. is charged against one.

350. "A decree of the court of common pleas of the proper county, sitting in equity, adjusting the indebtedness between a new school district and the original district, of which it formerly constituted a part, in accordance with the provisions of the act of June 24, 1895, P. L. 259, is not in conflict with Art. IX., Sec. 8, of the Constitution of Pennsylvania, though the result of such decree may be to charge the new district with an indebtedness exceeding two per cent. of the assessed valuation of taxable property." ⁵

Resolution of school board to lay an annual tax for support of library not an increase of indebtedness under the constitution.

351. The Norristown School Board, at a regular meeting held May 3, 1901, passed the following resolution:

"Whereas, Hon. Andrew Carnegie made the following proposition: 'If Norristown will provide a suitable site,

3. Dolan et al. vs. Lackawanna School District, 10 D. R. 694, 1901.

4. Luburg's Appeal, 23 W. N. C. 454, 1889.

5. Parker Twp. School District vs. Bruin Boro. School Dist. 13 D. R. 769, 1901.

and, by ordinance, agree to tax itself to extent of \$5,000.00 a year for the support of library, . . . he will be glad to give \$50,000.00 for a library building ;'

"And whereas, the citizens of Norristown and elsewhere, by public subscription, are providing (with other money made available) the necessary means to purchase the Slingluff property, opposite the high school, at the price of \$20,000.00 as and for the most suitable site for a new public library ;

"Therefore, be it and it is hereby resolved by the board of school directors of the borough of Norristown, in regular meeting assembled, and acting by virtue of the power invested in said school board under the act of the General Assembly of the Commonwealth of Pennsylvania, passed June 28, 1895, and supplements, in consideration of the offer of the Hon. Andrew Carnegie to give the sum of \$50,000.00 for the erection of a public library building, and of the donations by those contributing moneys for the purchase of a suitable site, the same are hereby duly accepted, and the said school board agrees annually to lay a tax on the valuation of the property assessed for school purposes sufficient to raise the sum of \$5,000.00, which tax shall be collectible as the school taxes of the district are at the time of collecting the same; and said sum of \$5,000.00 so annually collected shall be appropriated for and toward the support, maintenance and increase of said free public library."

Among others, the following objections to the tax were raised : "The action of the school board constitutes an attempt not only to impose upon the district a permanent indebtedness without provision for redemption, but an indebtedness in excess of the constitutional limit of two per cent."

The court said : "If the action of the school board is to be considered as the creation of a debt, then either of the reasons assigned would be fatal to the library project. . . . We are of the opinion that the agreement or resolution of the school board to levy an annual tax of \$5,000.00 for the support of a library is not the creation of a debt within the

meaning of any act of assembly or of the constitution. . . . The proposition before us is not to create a debt within the meaning of the constitution, but to increase the current revenue of the school district for a lawful purpose, and in an amount, as the facts before us disclose, far below the maximum limit stated in the act of 1895. If the time should ever come when the assessed valuation of property in the Norristown school district should fall below \$5,000,000.00, and the law should remain as it is now, the levy could not exceed one mill. Or, if a future school board should refuse to make a levy of any amount for the maintenance of the library, we have very little doubt as to the remedy by mandamus. But these questions are not before us now. In the particular phase of the case now under discussion, the question is, whether by any rule of construction the action of the school board can be considered as an increase of debt within the inhibition of the constitution. We are clearly of the opinion that it is not.”⁶

What the word “indebtedness” shall include.

352. The word “indebtedness,” used in this act, shall be deemed, held and taken to include all and all manner of debt, as well floating as funded, of the said municipality; and the net amount of such indebtedness shall be ascertained by deducting from the gross amount thereof, the moneys in the treasury, all outstanding solvent debts, and all revenues applicable within one year to the payment of the same.⁷

Calculating assets and liabilities to determine indebtedness.

353. “In calculating the assets and liabilities of a school district to determine whether certain contracts authorized by the district are unlawful by reason of their increasing the indebtedness of the district beyond its constitutional limitation.

“(a) The commissions and exonerations must be deducted from the amount claimed as an asset due the district from taxes.

6. Sheetz et al. vs Norristown Boro. School Dist. 11 D. R. 403, 1901.

7. Act April 20, 1874, Sec. 5, P. L. 65.

"(b) The value of certain lots of the school district, estimated at the amount of allowance which one of the contractors offers to make for them, if the school district will let them go at that price, is too problematic an asset to be considered as such.

"(c) The right of the new board to levy a tax for building purposes is not an asset.

"(d) Money due the school district from another school district, on an adjustment of the assets and liabilities between them, is an asset, although the exact amount thereof has not been determined by the auditor appointed for that purpose." ⁸

Statement of indebtedness to be published annually.

354. The corporate authorities of every such municipality or district shall, annually, in the month of January, prepare and publish in at least two newspapers of said municipality or of the county in which the same is situate, if so many be printed therein, a statement showing in detail the actual indebtedness, the amount of the funded debt, the amount of the floating debt thereof, and valuation of taxable property therein, the assets of the corporation, with the character and nature thereof, and the date of maturity of the respective forms of funded debt thereof, and a neglect or failure so to do shall be a misdemeanor, punishable by fine not exceeding one thousand dollars.⁹

Annual tax for the payment of interest and debt required by the constitution.

355. Any county, township, school district, or other municipality, incurring any indebtedness, shall, at or before the time of so doing, provide for the collection of an annual tax sufficient to pay the interest, and also the principal thereof within thirty years.¹⁰

Debt may be increased by vote. Manner of payment. Statement.

356. Any county, city, borough, school district or other municipality or incorporated district may incur debt,

8. Dolan et al. vs. Lackawanna School District, 10 D. R. 694, 1901.

9. Act April 20, 1874, Sec. 6, P. L. 65.

10. Constitution of Penna., Art. IX., Sec. 10.

or increase its indebtedness to an amount in the aggregate not exceeding two per centum upon the assessed value of the taxable property therein, as fixed and determined by the last preceding assessed valuation thereof; and the corporate authorities of such municipality may, by a vote thereof duly recorded upon its minutes, authorize and direct the incurring or the increase of such debt to the amount aforesaid, and may issue coupon bonds or other securities therefor in sums not less than one hundred dollars each, bearing interest at a rate not exceeding six per centum per annum, payable semi-annually, and the principal thereof reimbursable at a period not exceeding thirty years from the date at which the same is authorized; and an annual tax commencing the first year after such debt shall be increased or incurred sufficient for the payment of the interest thereon, and the principal of such debt within a period not exceeding thirty years from the date of such increase shall be forthwith assessed. Before issuing any such obligation or security, it shall be the duty of the principal officer or officers of such municipality or incorporated district to prepare a statement, showing the actual indebtedness of such district, the amount of the last preceding assessed valuation of the taxable property therein, the amount of debt to be incurred, the form, number and date of maturity of the obligations to be issued therefor, and he shall make and append thereto his oath or affirmation of the truth of the facts therein stated, and shall file the said statement in the office of the clerk of the court of quarter sessions of the proper county; upon failure so to do, he shall be guilty of a misdemeanor, and on conviction thereof shall be punished as provided in the first section of this act. Certified copies of the record of such statement under the seal of said court shall be competent evidence in all the courts of this Commonwealth: Provided, That the bonds shall not be sold at less than their par value.¹¹

11. Act April 13, 1897, P. L. 17. amending Sec. 2, Act April 20, 1874, P. L. 65.

Provisions of the acts providing for an increase of indebtedness must be strictly complied with.

357. "The provisions of the act of April 20, 1874 (and amendments), for increasing an indebtedness of a school district exceeding two per cent. of its assessed valuation, must be strictly complied with. The absence of a valid notice of an election upon the question of increase of indebtedness, as required by the act of 1874, the omission of the school board to levy an annual tax to pay the interest, etc., as required by Sec. 10, Art. IX., of the Constitution, and the failure to file a statement showing the indebtedness, etc., as required by the act of 1874, will prevent the issuing of bonds.

"The spirit of the act of 1874 requires publication of notice of such election to be weekly for the thirty days immediately preceding the election." ¹²

Statement must show "actual indebtedness."

358. The evident legislative intent, permeating the entire statute law on the subject of municipal debt, is that it shall not be done in the dark—that the people who pay are entitled to know what they are paying for. And so, the statement required to be published at the end of the fiscal year must show the indebtedness in detail, and that required to be filed in the office of the clerk of quarter sessions must show, not the probable amount of indebtedness as guessed at, but the "actual indebtedness" as ascertained. What that is lies, or should lie, peculiarly within the knowledge of the school directors. Where the correctness of their filed statement in this regard is attacked, the burden is, therefore, upon them to support it; and when, as here, the evidence develops the fact that the directors did not know what the "actual indebtedness" of the district was, it is sufficiently obvious that they could not, and hence did not, file a statement "showing the actual indebtedness of such district" as required by law, and, therefore, have no authority to issue the bonds in question." ¹³

12. *Witherop vs. Titusville School Board et al.*, 7 Pa. C. C. 451, 1889.

13. *Mason vs. School District*, 10 Kulp 563, 1890.

A board of school directors shall not be enjoined from incurring a debt which they deny will exceed the legal amount and the proofs fail to disprove it.¹⁴

Notice of election on question of increase. Statement. Election.

359. The indebtedness of any county, city, borough, township, school district or other municipality or incorporated district in this Commonwealth, may be authorized to be increased to an amount exceeding two per centum, and not exceeding seven per centum, upon the last preceding assessed valuation of the taxable property therein, with the assent of the electors thereof, duly obtained at a public election to be held in the said district or municipality. Whenever the corporate authorities of any county, city, borough, township, school or other municipality or incorporated district, by their ordinance or vote shall have signified a desire to make such increase of indebtedness, they shall give notice during at least thirty days, by weekly advertisements in the newspapers, not exceeding three in said district; and if no newspaper be published therein, by at least twenty printed hand bills posted in the most public parts thereof, of an election to be held at the place or places of holding the municipal elections in said district or municipality on a day to be by them fixed, for the purpose of obtaining the assent of the electors thereof to such increase of indebtedness.

Said notice shall contain a statement of the amount of the last assessed valuation, of the amount of the existing debt, of the amount and percentage of the proposed increase, and for the purposes for which the indebtedness is to be increased. Such election shall be held at the place, time and under the same regulations as provided by law for the holding of municipal elections, and it shall be the duty of the inspectors and judges of such elections to receive tickets, either written or printed from electors qualified under the constitution of this state to vote in such district, labeled on the outside, "Increase the debt," and containing in the in-

14. *Richards vs. Joyce*, 8 Kulp 572, 1897. *Wharton et al. vs. School Directors*, 42 Pa. 358, 1862. *McKean et al. vs. Brown et al.* 3 Kulp 266, 1882.

side the words, "no increase of debt," or "debt may be increased;" also briefly, the purpose and amount of increase, and to deposit said ticket in a box provided for that purpose, as is provided by law in regard to other tickets received at said election; and the tickets so received shall be counted, and a return thereof made to the clerk of the court of quarter sessions of the proper county, duly certified, as is required by law, together with a certified copy of the ordinance and the advertisement; and the said clerk shall make a record of the same, and furnish a certified copy thereof, under seal, showing the result, to the corporate authorities of such municipality, and the same shall be placed of record upon the minutes thereof. The corporate authorities of such municipality shall, in all cases, fix the time of holding such election on the day of the municipal or of the general election, unless more than ninety days elapse between the date of the ordinance or vote desiring such increase, and the day of holding the said municipal or general election. If any other day be fixed for such election, the expense of holding the same shall be paid by the municipality for the benefit of which it shall be held. In receiving and counting and in making returns of the votes cast, the inspectors, judges and clerks of said election shall be governed by the laws of this Commonwealth regulating municipal elections; and the vote shall be counted by the court as is now provided by general laws governing municipal elections, and all the penalties of the said election laws for the violation thereof, are hereby extended to, and shall apply to the voters, inspectors, judges and clerks voting at and in attendance upon the elections under the provisions of this act.¹⁵

Result of election. If for increase, tax to be levied for payment.

360. Whenever, by the returns of such election, it shall appear that there is a majority voting for "no increase of debt," such increases shall not be made. Nor shall any other election upon the same subject be held in that municipality for one year from the date of such preceding election. If the

15. Act June 9, 1891, P. L. 252, amending Sec. 3, Act April 20, 1874, P. L. 65.

return of such election shall show a majority voting that "debt may be increased," the corporate authorities of the municipality may increase the same to the amount named and specified in the notice given for the holding of such election for increasing indebtedness, to an amount not exceeding two per centum, including the sworn statement to be filed in the office of the court of quarter sessions of the proper county; and they shall, before issuing any obligations therefor, assess and levy an annual tax, the collection whereof shall commence the first year after the said increase, which tax shall be equal to and sufficient for and applied exclusively to the payment of the interest and the principal of such debt within a period not exceeding thirty years from the date of such increase; and the moneys arising from such tax shall be applied, at such periods as the municipality may stipulate in such obligations, to the redemption, at par, of the said outstanding obligations according to their terms.¹⁶

Act of April 18, 1895, limited increase of debt at any time to two per cent.

361. Under the act of April 18, 1895, P. L. 36, a municipality can only increase its indebtedness at any one time, at any election, by an amount not over two per centum, by a vote of the people.¹⁷

Bonds may be redeemed before or after maturity with consent of holders.

362. In all cases where any school district, or school directors of any such district, in this Commonwealth has, by virtue of any law or any general or special act of assembly of this Commonwealth, issued bonds, either with or without interest coupons attached, certificates or any other evidences of indebtedness, to secure any indebtedness of any such school district, it shall be lawful for the school directors, or proper officers of any such school district, to redeem any or all of the bonds, certificates or any other evidences of indebtedness so issued as aforesaid, before or after maturity thereof,

16. Act April 18, 1895, P. L. 36, amending Sec. 4, Act April 20, 1874, P. L. 65.

17. But see Act of March 11, 1897, Sec. 1, P. L. 53.

with the consent of the holders thereof, and for the purpose of redeeming or paying any such bonds, certificates or other evidences of indebtedness, to issue new bonds therefor, payable at any time not exceeding twenty years after the date thereof, at the same or any lower rate of interest, with or without interest coupons attached, and not exceeding in the aggregate amount the amount of the bonds, certificates or other evidences of indebtedness, so redeemed or paid.¹⁸

Refunding and redemption of existing indebtedness, incurred prior to April 20, 1875.

363. The existing indebtedness of any county, city, other than those of the first or second class, borough, school district, or other municipality or incorporated district, within this Commonwealth, evidenced by outstanding bonds, certificates, or notes issued prior to the twentieth day of April, Anno Domini one thousand eight hundred and seventy-five, may be provided for as the same shall mature by an issue to the holders of such outstanding bonds, certificates or notes, of bonds or certificates in lieu thereof, if they shall agree to receive the same, or by the issue and sale at not less than par, of bonds or certificates in lieu of indebtedness outstanding on the said twentieth day of April, Anno Domini one thousand eight hundred and seventy-five, except as hereinafter provided: Provided, That such bonds or certificates shall bear interest, at a rate not exceeding six per centum per annum, and may be issued redeemable at the pleasure of the obligators at any time fixed by them within twenty years from the date thereof; and it shall be the duty of the proper corporate authorities of such municipality or incorporated district, to assess and levy a special annual tax not exceeding five mills on the dollar on the assessed valuation thereof, immediately after the passage of this act, to pay such bonds or certificates reissued or issued and sold as aforesaid and which shall be sufficient for, and applied exclusively to, the payment of the interest and principal of such bonds and certificates within a period not exceeding twenty years from the date of such bonds and cer-

18. Act May 10, 1881, P. L. 16.

tificates so reissued or issued and sold : Provided, further, That the provisions of this act shall not be so construed as to authorize a reissue of any bonds or certificates which were issued, the legality and validity of which is now questioned by legal proceedings in any of the courts of the Commonwealth: And provided, further, That said reissued bonds shall not be liable to local taxation: And provided, further, That this act shall apply to municipalities the amount of whose legal indebtedness is limited in their respective charters of incorporation and supplement thereto as well as those not so limited.¹⁹

Bonds issued since the 18th day of April, 1895, validated.

364. All bonds or other obligations of any county, city, borough, township, school district or other municipality or incorporated district within this Commonwealth, issued with the consent of the electors of such county, city, borough, township, school district or other municipality or incorporated district, in conformity with the requirements of the law, except that the same have been issued since the eighteenth day of April, Anno Domini one thousand eight hundred and ninety-five, in amounts in excess of two per centum of such last assessed valuation, be and the same are hereby made valid legal obligations of the respective county, city, borough, township, school district or other municipality or incorporated district, which has issued the same, and that the said respective county, city, borough, township, school district or other municipality or incorporated district shall be and is bound for the payment in full of said bonds or other obligations according to the tenor thereof.²⁰

Bona fide purchasers of school bonds or other securities. School district cannot deny statement to repudiate bonds.

365. "Where the president of a school board files with the clerk of quarter sessions of the county a sworn statement, showing the assessed valuation of taxable property in the district and the amount of its indebtedness, and that the

19. Act May 8, 1876, P. L. 128.

20. Act May 19, 1897, P. L. 76.

provisions of the act of April 20, 1874, P. L. 65, and its supplement of April 13, 1897, P. L. 17, have been complied with, the school district is estopped from setting up that the bonds were not issued in accordance with the provisions of the acts, as against a bona fide holder for value, who purchased them in reliance upon the facts set forth in the statement.^{21 21}

Where debt is lawful, though some provisions of the act not complied with, court will protect innocent purchasers of bonds.

366. When a school district issues bonds, payable out of assessments on property, and subsequently the assessment is declared illegal, the illegality of the assessment does not relieve the district from liability on the bonds.²²

Illegality of assessment does not invalidate bonds.

367. A school district, desiring to borrow money for the purpose of erecting school houses or purchasing grounds whereon to erect school houses, must advertise in two newspapers for at least four weeks their intention to apply to the court of common pleas for its approval, as required by the act of April 21, 1871, P. L. 241, and procure the decree of the said court, before said district can file its statement in the office of the clerk, issue its bonds and levy the tax. But if the bonds have been issued without such proceedings and sold to innocent purchasers, if the debt so created is lawful and no proceedings have been instituted, until nearly three months after the sale of such bonds to restrain such issue, the court will decree the issue of such bonds, *nunc pro tunc*, when the statement is presented with all the formalities required by the acts of assembly.²³

Court of common pleas has authority to authorize debt under act of 1871.

368. The several courts of common pleas of this Commonwealth shall have power to authorize the school direc-

21. Parker Twp., School Dist. vs. Bruin Boro. School Dist. 13 D. R. 769, 1901.

22. Parker Twp. School Dist. vs. Bruin Boro. School Dist. 13 D. R. 769, 1901.

23. Phila. and Reading Coal and Iron Co. vs. Porter Twp. School Dist. 14 D. R. 581, 1905.

tors, of any school district within their respective jurisdictions, to borrow money for the purpose of erecting school houses, to an amount not exceeding five per centum upon the last preceded adjusted tri-ennial valuation of the property of said school district; and the said court may decree that such moneys shall be raised by bonds, mortgages or other security, at any rate not exceeding eight per centum, free from all taxation, and reimbursable at any period not exceeding twenty years from the date of such decree: Provided, That before exercising jurisdiction of the petition of the board of school directors, or a majority thereof for such decree, the said board shall produce to the court the consent, in writing, of a majority in number of the qualified electors of such district: And provided further, That no such decree shall be made until notice by advertisements in two papers of said county, if so many shall be therein published, shall have been given by the said board of directors, during at least four weeks, of their intention to make application for such decree.²⁴

Power of the court of common pleas to adjust indebtedness.

369. That the proviso of the act giving the courts of common pleas of this Commonwealth power to authorize school directors to borrow money, which requires them to produce to said court the consent, in writing, of a majority in number of the qualified electors of the district for whose use the money is wanted, be and the same is hereby repealed.²⁵

The act of 1871, above quoted, not repealed by the act of 1874.

370. "It was decided by this court, in an opinion filed by the late lamented Judge Cyrus L. Pershing, in the case of the City of Philadelphia vs. West Mahanoy Township School District (not reported), that the act of 1874 does not repeal the prior acts relating to school districts.

"If the act of 1874 did not repeal the act of 1868, neither, in our judgment, did it repeal the provisions of the school law, which expressly declares for what purposes and

24. Act April 21, 1871, P. L. 241.

25. Act April 7, 1873, P. L. 64.

in what way a debt may be created, and it is still necessary for the district desiring to borrow money for either of the two purposes mentioned in the act of 1854, to advertise in two newspapers for at least four weeks of their intention to apply to the court of common pleas for their approval, and procure the decree of the said court before said district can file its statement in the office of the clerk, issue its bonds and levy the tax.”²⁶

Court may appoint an examiner to take testimony where petition is presented to borrow money.

371. On an application by school directors for permission to borrow money, it is lawful for the court to appoint an examiner to take testimony as to the facts alleged in the petition and remonstrance, and upon his report being filed, to direct the payment of a reasonable allowance for his services.

The school district may be directed to pay the allowance in the first instance, although the report of the examiner is favorable to the petition of the directors.²⁷

Issuing of bonds in pursuance of centralization.

372. Should the board of school directors deem it necessary to issue bonds to purchase a site or sites, or erect a building or buildings, for the purpose of such centralization, then the election shall be conducted as provided in section three of this act, but in such case the ballots shall also have printed thereon: For levying a tax to purchasesite (or sites) and erectbuilding (or buildings) for the centralization of schools, at a cost not to exceed \$. Yes, For levying a tax to purchasesite (or sites) and erectbuilding (or buildings) for the centralization of schools, at a cost not to exceed \$. No; and if more votes are cast in favor of levying said tax for said purpose than against said proposition at such election, it shall be the duty of the said board of school directors, and the board of school directors is authorized to issue bonds and sell the same as provided by law, and to levy a special tax to provide for the payment of the same, together with

26. Phila. and Reading Coal and Iron Co. vs. Porter Twp. School Dist., 14 D. R. 581, 1905.

27. In re School Directors, 3 Kulp 59, 1884.

interest thereon, provided said levy shall not in any one year exceed five mills on the dollar valuation, and said bonds shall not bear more than five per centum interest, and shall not be sold at less than their face value.²⁸

How to validate indebtedness created by school directors without assent of electors.

373. That whenever any school district in any borough or township of this Commonwealth shall have heretofore created an indebtedness for a lawful purpose, by action of the legal and proper officers thereof, such indebtedness being within the constitutional limit of seven per centum and in excess of two per centum of assessed valuation of such school district, and not having first obtained the assent of the electors thereof in favor of increasing such indebtedness as provided by law, it shall be lawful for the proper officers of such school district to cause to be submitted to the electors of such district the question of validating and giving binding force to such indebtedness theretofore attempted to be created.²⁹

Duties of corporate authorities. Notice.

374. The corporate authorities of any such school district may, by resolution, signify their desire to validate and give binding force to such indebtedness, whereupon it shall be their duty to give notice during at least thirty days by weekly advertisements in the newspapers, not exceeding three in said district; and if no newspaper be published therein, by at least twenty handbills posted in the most public parts thereof, of an election to be held at the place or places of holding the municipal elections, in which such school district may be, on a day to be by them fixed, for the purpose of obtaining the assent of the electors thereof, to the making valid and giving binding force to such increase of indebtedness. Said notice shall contain a statement of the amount of the last assessed valuation, of the amount of the existing debt, of the amount and percentage of the increase proposed to be made valid, and of the purposes for which the indebtedness was created and the money used.³⁰

28. Act of April 25, 1901, Sec. 4, P. L. 105.

29. Act June 10, 1897, Sec. 1, P. L. 139.

30. Act June 10, 1897, Sec. 2, P. L. 139.

Election. Tickets. Time of holding. Expenses.

375. Such election shall be held at the place and time and under the same regulations, as provided by law for the holding of municipal elections, and it shall be the duty of the inspectors and judges of such election to receive tickets, either written or printed, from electors qualified under the constitution of this state to vote in such district, labeled on the outside "increased debt," and containing in the inside the words "in favor of debt as already increased," or "against debt as increased," and to deposit said tickets in a box provided for that purpose as is provided by law in regard to other tickets received at said election; and the tickets so received shall be counted and return thereof made to the clerk of the quarter sessions of the proper county, duly certified, as is required by law, together with a certified copy of the resolution and the advertisement; and the said clerk shall make record of the same and furnish a certified copy thereof, under seal, showing the result, to the corporate authorities of such school district, and the same shall be placed of record upon the minutes thereof. The corporate authorities of such school district shall in all cases fix the time of holding such elections on the day of the municipal or of the general election, unless more than ninety days elapse between the date of the resolution or vote desiring such increase and the day of holding the said municipal or general election. If any other day be fixed for such election the expense of holding the same shall be paid by the school district for the benefit of which it shall be held.³¹

Election to be governed by existing laws.

376. In receiving and counting and making return of the votes cast, the inspectors, judges and clerks of said election shall be governed by the laws of this Commonwealth regulating municipal elections, and the vote shall be counted by the court as is now provided by general laws governing municipal elections; and all the penalties of said election laws for the violation thereof are hereby extended to and

31. Act June 10, 1897, Sec. 2, P. L. 139.

shall apply to the voters, inspectors, judges and clerks voting at and in attendance upon the elections held under the provisions of this act.³²

When debt shall become valid. Tax to pay debt.

377. Whenever, by the returns of such election, it shall appear that a majority of the votes cast is in favor of making valid the increased debt, such debt shall thereupon become valid and of binding force; but the proper authorities in said school district shall, before issuing any obligations therefor, assess and levy an annual tax, which tax shall be equal to at least eight per centum of the amount of such increased debt, and which shall be sufficient for and be applied exclusively to the paying of the interest and principal of such debt within a period not exceeding thirty years from the date of such increase, and the moneys arising from such tax shall be applied annually, as far as the same may accumulate, to the redemption at par of said outstanding obligation.³³

Recall of bonds irregularly issued.

378. Where any school district in any borough or township has heretofore issued bonds or other evidences of indebtedness, without having first submitted the question of increasing the indebtedness to the electors of the district, when such submission was made necessary by law, such bonds or other evidences of indebtedness shall be returned and canceled before the issuance of other bonds or evidences of indebtedness made valid by such election as hereinbefore prescribed.³⁴

Where act shall not apply.

379. The provisions of this act shall not apply to any case where, by judicial decision, the bonds of any school district shall have been declared invalid.³⁵

All acts or parts of acts inconsistent herewith are hereby repealed.³⁶

32. Act June 10, 1897, Sec. 2, P. L. 139.

33. Act June 10, 1897, Sec. 3, P. L. 139.

34. Act June 10, 1897, Sec. 4, P. L. 139.

35. Repeal Act June 10, 1897, Sec. 5, P. L. 139.

36. Act June 10, 1897, Sec. 6, P. L. 139.

Adjustment of indebtedness where new districts are formed by the erection of boroughs out of townships ; where township has been merged into more than one borough, etc. Court, sitting in equity, to adjust and apportion indebtedness.

380. Whenever any school district has been or may hereafter be formed as aforesaid,³⁷ or whenever any school district has been or may hereafter be entirely merged into more than one school district as aforesaid,³⁸ any court of common pleas, of the proper county, sitting in equity, shall have power, upon the application of any one or more creditors of the school district or districts of said township or townships, or upon the application of the proper authorities of the school district or districts of any said township or townships, borough or boroughs, or either of them, by a suit or suits in equity, to ascertain the indebtedness of the school district or districts of the said township or townships at the time of the formation of each of the school districts of said boroughs respectively, and to equitably adjust and apportion said indebtedness between the school district or districts of said township or townships and borough or boroughs, and between the several school districts of the boroughs into which any township shall have become merged, as aforesaid, and where any school, real estate and movable property belonging to the school district or districts of said township or townships are or shall be within the bounds of any such new district. The said court shall further determine, on hearing, whether an undue proportion of the real estate and movable property belonging to the old district or districts are within the bounds of the new district and, if so, how much money shall be paid therefor by the new to the old district or districts, and the court shall thereupon decree the proportion of said indebtedness which each of said school districts shall pay and the amount of money, if any, which the new district shall pay to the old district or districts for any undue proportion of the school property within the bounds of such new district. In making said adjustment

37. Note.—See *Supra*, Sec. 37, p. 14, CHANGES IN SCHOOL DISTRICTS, Sec. 1, Act June 24, 1897, P. L. 259.

38. Note.—See *Supra*, Sec. 38, p. 14, CHANGES IN SCHOOL DISTRICTS, Sec. 2, Act June 24, 1895, P. L. 259.

as applied to each of said new school districts reference shall be had to the time of the formation of such new school district and to the debts existing at the end of the current school year in which it was formed, whether since paid or not, and also to the several amounts of school taxes then unexpended and the said adjustment shall be based upon the assessment of said township or townships for the year in which such new district was formed: Provided, That in ascertaining said indebtedness, neither pending actions nor claims against the school district or districts of said township or townships, founded on tort, shall be included, unless the same shall in the meantime have been prosecuted to final judgment.³⁹

Act of June 24, 1895, constitutional.

381. It is not in conflict with Article I., Sec. 6 of the constitution, providing that trial by jury shall be as heretofore and the right thereof remain inviolate.⁴⁰

Measure of value of school property in adjusting indebtedness.

382. Where a division of property is to be made between two school districts created by the erection of a new district out of part of an old one, the proper ratio of distribution is the assessed values of taxable property in the respective districts.

In determining the value of school buildings the auditor should value them by evidence of what they are worth as school houses, provided they are worth more for that than any other purpose. The mere market value is not the test.⁴¹

Court may pass upon the claims of third parties in adjusting indebtedness.

383. "Does the act of 1895 authorize the court to determine the rights of third parties and adjust their indebtedness as against the municipalities? At first blush, it seemed not, and upon the argument we were of the opinion

39. Act June 24, 1895, Sec. 3, P. L. 259.

40. Parker Twp. School Dist. vs. Bruin Boro. School Dist. 13 D. R. 769, 1901.

41. Darby vs. Sharon Hill, 2 D. R. 485, 1892.

that it could not. But after examination the authorities were convinced that the act of assembly gives that power. The School District of Parker Township has invoked the power of the court sitting in equity to adjust the indebtedness between it and the School District of Bruin Borough.

"We took jurisdiction, and have spent many days in attempting to do what was requested by the plaintiff; must we now suspend until the courts of law can dispose of the contentions of third parties with the school districts? We think not. It would be an affectation of learning to cite cases that hold when a court of equity once has a case within its grasp, it not only has the power but it is its duty to dispose of all questions arising in the case." 42

Court may appoint auditor to report upon proper adjustment.

384. Where a borough is created out of part of the territory comprised in another borough, the court of quarter sessions has jurisdiction, under the act of June 1, 1887, P. L. 285, to appoint an auditor to report upon the proper adjustment of the property and indebtedness of the school districts of the two boroughs.⁴³

Notice to persons to present claims. Failure to present claims, etc.

385. Three months public notice shall be given under the order of said court to all persons having claims against the school district or districts of said township or townships, excepting claims in pending actions and claims founded on tort, as aforesaid, to present the same on or before the day therein named, and all persons not presenting their said claims on or before the said day shall be forever debarred from enforcing collection of the same, said notice to be published in not less than two newspapers of the proper county, if there are so many printed in said county, or if there be but one newspaper printed therein, then said notice shall be printed in the same and shall be published in any other manner directed by the said court: Provided however,

42. Parker Twp. School Dist. vs. Bruin Boro. School Dist., 13 D. R. 769, 1901.

43. Darby Borough School District's Appeal, 160 Pa. 79, 1894. See Darby vs. Sharon Hill, 2 D. R. 485, 1892.

That no owner or holder of any bond or bonds of any such school district shall, for any failure to present or make proof of the same as aforesaid, be precluded or debarred thereby from enforcing collection of the same.⁴⁴

Court to make necessary rules for collection and payment of the adjusted indebtedness.

386. The said court shall have power to make all needful rules, orders and decrees in the premises, and for the collection and payment by the school district or districts of said township or townships, borough or boroughs of the share of said indebtedness, respectively, apportioned to them, and of any sum of money decreed to be paid by any such new district to the school district of any township from which it was formed for any undue proportion of school property within the bounds of such new district, and may order the proper officers of the school district or districts of any said township or townships, borough or boroughs, or of either of them, to collect, by special taxation, an amount sufficient to pay the same, either in any one year or by annual installments, as to the court shall appear just and reasonable.⁴⁵

Court may appoint receiver to whom money shall be paid. Duties of.

387. The said court shall have power, in its discretion, to appoint a receiver to whom the money due on account of indebtedness from each school district for the purpose aforesaid shall be paid, and it shall be his duty to pay over the amount so received by him to the holders of said indebtedness in such order or in such proportions as the court shall direct, and in case of any special taxation in any said school district, or in all of them, being ordered for or on account of any indebtedness as aforesaid, the collector of said special tax shall pay the same directly to said receiver.⁴⁶

How indebtedness and balance in the treasury shall be credited.

388. The school district of each borough, in any of the cases aforesaid, shall be credited with the proper share of

44. Act June 24, 1895, Sec. 4, P. L. 259.

45. Act June 24, 1895, Sec. 5, P. L. 259.

46. Act June 24, 1895, Sec. 6, P. L. 259.

such indebtedness due to the school district or districts of said township or townships at the time of the formation of such borough district, as shall have since been collected, and shall likewise be credited with its proper share of any unappropriated balance in the treasury of the school district or districts of said township or townships at the end of the current school year during which such borough district shall have been formed, and the said court shall have like power to equitably adjust and apportion the same.⁴⁷

Costs, how paid.

389. The costs of said proceedings shall be paid by the school districts of the said several townships and boroughs in such proportions as the said court shall adjudge, and the orders and decrees of the said court in such proceedings may be enforced by attachment.⁴⁸

47. Act June 24, 1895, Sec. 7, P. L. 259.

48. Act June 24, 1895, Sec. 8, P. L. 259.

CHAPTER XVII.

TAXATION.

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390. The Constitution, Article X., Sec. 1, requires the General Assembly to provide "for the maintenance and support of a thorough and efficient system of public schools." Taxation is one of the means adopted to effect this purpose.

School board to determine the amount of tax.

391. The school directors or controllers of every district shall annually, before the 1st of July,¹ and by votes of not less than a majority of the members of the board, determine the amount of school tax which shall be levied on their district for the ensuing school year, which shall, together with such additional sums as the district may be entitled to receive out of the state appropriation, and from other sources be sufficient and necessary to keep the schools of the district in operation not less than seven² nor more than ten months in the year, provided that the length of the annual term may remain as at present in districts where the maximum amount of tax allowed by law to be levied for school purposes, together with the amount of state appropriation to which the said districts are entitled, shall be found insufficient to keep the schools open a greater length of time than six months.³

Tax to be levied but once a year.

392. The answer of the board of directors in proceedings had against them to restrain them from levying a second tax during the same year, set forth that "The term for the school year had been fixed at ten months, and teachers employed for that term. New school buildings were erected, and, subsequent to the June levy, the roof of the school building was found to be in bad repair. Severe storms occurred and injured the school property, which had not been foreseen, and, in order to protect said property and furnish new buildings, this tax of December, 1887, was levied; without this it would have been impossible to maintain schools, or to protect school property.

1. Act April 22, 1863, P. L. 523.

2. Act April 4, 1899, P. L. 31.

3. Act of May 8, 1854, Sec. 28, P. L. 617.

In reply, the lower court, sustained by the Supreme Court, said :

“ We fully appreciate the difficulties that the board of directors labor under in this case, as disclosed by the answer filed and affidavit ; but the act of assembly gives the directors no power to make a second levy for the same purpose. The plain words of the act are, that, for school purposes, the directors shall annually levy a tax for school purposes. After this has been done, no other tax can be levied for the same purpose during the same year.” ⁴

Legal requirements as to determining tax.

393. Without proper preliminary meeting there can be no legal assessment.

“ It is a part of the law relating to common schools that, at their first annual meeting in each school year, they are required to ascertain by the precise means pointed out by the school law the amount or rate of mills that is to be collected during the ensuing school year for school purposes, and for building purposes, if there is any building tax to be collected. They are required to do this, and to keep a minute of it ; and to authorize the issue of a warrant to any collector to collect school tax, there must be this preliminary meeting of the school board ; and they are to determine what amount of rate of mills shall be assessed for school purposes. Without that there can be no legal assessment of school tax.” ⁵

Tax levy. Time of making the levy.

394. The amount of the tax to be levied cannot be determined until between the date of organization and the 1st day of July, and the tax ought to be levied before the 1st day of July, but a levy after such date has been held to be legal.

In *Walker vs. Edmonds*, 197 Pa. 645, 1901, the only reference to any regular annual tax appeared under the dates of June 19 and July 22, 1897. Under June 19, as follows : “ And in order to provide for principal and interest on said bonds as they become due, that we levy two (2) mills in ad-

4. *Verona Borough School District's Appeal*, 1 Mona. 697, 1889.

5. *Irvin vs. Gill*, 155 Pa. 8, 1893.

dition to our present millage, which shall be designated as the high school building and ground tax," etc. And under date of July 22, as follows: Moved by Edmonds and seconded by Twaddle that the clerk be instructed to add to the minutes of June 19, 1897, after the words, "Our present millage," the words, to wit: Eight mills for ordinary school purposes, the omission of which words from said minutes was a clerical error, etc. The Supreme Court said: "The court (below) also ruled that as the act of assembly required that the determination of the amount to be levied, and the levy itself, should be made by the school directors before July 1; a strict compliance with its requirements was necessary, and without it there could be no legal assessment of the school tax.

"The act is clearly not mandatory, but only directory in this respect, and if the only question were as to whether or not the levy had been made at the proper time, we would have no difficulty in sustaining it. Where action is required to be taken within a certain time, the mere failure of an officer or of a body to act within the set time is not fatal, and the requirement as to time may be held to be directory." ⁶

Resolutions and proceedings of the board should appear upon the minutes.

395. "Before a school board, therefore, should exercise the sovereign power of levying a tax, there ought to be a deliberation as a body, a careful investigation of assets and liabilities, a clear understanding of the needs of the district, and an intelligent ascertainment of the amount necessary to meet those needs, and that this has been done should appear on the minutes."

"In this case the only minute of the school board as to the levying of a tax was the following: 'Plymouth, June 29, 1901, Plymouth school board met this evening, with President Virtue in the chair, and all members present. Motion by Dunphy, seconded by Boyle, that we levy 13

6. See also *Gearhart vs. Dixon*, 1 Pa. 228, 1845.

mills for school and 13 mills for building. Carried.'” The court declared this minute insufficient.⁷

“The minutes of the board of directors of a meeting on June 19, 1897, show these words, ‘That we levy two mills in addition to our present millage, which shall be designated as the high school building and ground tax, etc.,’ but there was nothing else in the minutes to show a levy or assessment for ordinary purposes, and the assessment of a high school tax of two mills was afterwards abandoned by the directors. But on July 22, an attempt was made to amend the minutes of June 19, so as to make the resolution read as follows: ‘That we levy two mills in addition to our present millage, eight mills for ordinary school purposes, which shall be designated as the high school building and ground tax, etc.’ We think the court below was right in holding that this is not a minute of a levy of a regular annual tax for such year, but is only a reference indicating that such action may have been taken at some other time and place; but nowhere in the minutes is there anything to show that such levy was actually made for the year 1897.”⁸

“Very large sums of money are annually appropriated by the commonwealth, and the people submit to the lawful tax for the benefit of the schools and the education of the children of the state. The law commands that the officials who control these vast sums and conduct the affairs of the schools shall expend the money economically and wisely, and that a record of how it is to be done shall be made, in most cases in advance.

“It may be mentioned here that most if not the whole difficulty complained of could have been avoided had the directors in the commencement of the school year made an itemized estimate of the resources as well as the liabilities and expenses of the district, and then spread the whole proceedings upon the minutes of the board.”⁹

7. *Coal and Iron Co. vs. Dunphy*, 11 D. R. 218, 1901.

8. *Walker vs. Edmonds*, 197 Pa. 645, 1901.

9. *Mitchell vs. McCormick*, 9 Kulp 286, 1898.

No tax to be levied by directors except by affirmative vote of a majority. Votes. Minutes.

396. A majority of the members of the board must vote for the tax, and the names of those voting in the affirmative and negative must be entered on the minutes.

No tax for school or building purposes shall be levied, except by the affirmative votes of a majority of the whole number of the directors or controllers thereof; and, in each of said cases, the names of the members voting, both in the affirmative and the negative, shall be so entered on the minutes of the board by the secretary.¹⁰

The courts demand a substantial compliance with all the provisions of the act.

397. They (provisions of the act) are wise and wholesome provisions, intended to correct gross abuses which had gradually crept into the administration of our school system, and hence it is not too much to insist upon a substantial compliance with the spirit, if not the very letter, of the act.¹¹

To hold that it is merely directory and that the board may at pleasure substitute a secret ballot, and thus make it impossible for the secretary to record the affirmative and negative votes, would defeat the manifest purpose for which it was enacted.¹²

In the matter of hiring teachers or levying taxes, where the law requires the vote of a majority of the whole board to vote for the hiring of the teacher or the levy of the tax, the minutes must show that at least four of the directors voted to levy the tax or to hire the teacher, and it is much better that the minutes show the names of the directors voting for and against such proposition.¹³

But where the minutes stated that all of the school directors were present, and the vote for the tax was unanimous, the names of those voting and how they voted, how-

10. Act April 11, 1862, Sec. 4, P. L. 471.

11. School District vs. Mercer, 115 Pa. 559, 1879.

12. Heisey vs. Risser, et al., 3 Pa. Superior Ct. 196, 1896.

13. C. Mathewson et al. vs. School Directors, 23 Pa. C. C. 121, 1899.
Burke vs. School District, 28 Pa. Superior Ct. 163, 1905.

ever, not appearing on the minutes, the act was held to have been substantially complied with.¹⁴

Where less than the whole board were present, but the minutes set forth the names of those present, and that in each case the resolution passes unanimously, the court, "after a good deal of hesitation," held that there had been a substantial compliance with the law.¹⁵

Amount of tax and kind of taxables.

398. The board of directors or controllers shall, annually, before the 1st day of July¹⁶ proceed to levy and apportion the school tax, not exceeding the amount of state and county taxes authorized by law to be assessed on all objects, persons and property, made or to be made taxable for state or county purposes, and that all the taxes levied and assessed by the directors or controllers within each school year, shall be contained in the same duplicate.¹⁷

Amount of tax not to exceed the sum of state and county tax.

399. "The school director says: 'I have now a lawful list of the subjects which I may tax, now what is the amount I may levy?' Answer: an amount not exceeding the amount, that is, the aggregate, the sum total of the state, and, i. e., added to (for this conjunction implies addition) the county tax.

We are, therefore, to take the amount of the county tax authorized by law at the time when the school tax is assessed, now ten mills, and add thereto the amount of the state tax, in like manner authorized at the time of said assessment, now three mills, and their sum gives us the maximum rate for the school assessment."¹⁸

"The amount of ordinary school tax cannot be greater in any district (except by special legislation) than the amount of state and county tax authorized by law to be assessed. The amount authorized to be levied at the time of

14. *Tobin vs. Morgan*, 70 Pa. 229, 1871.

15. *Genesee Township vs. McDonald*, 98 Pa. 444, 1881.

16. Act April 22, 1863, P. L. 523.

17. Act May 8, 1854, Sec. 30, P. L. 617.

18. *Conyngham School District's Appeal*, 77 Pa. 265, 1874.

the passage of the law was thirteen mills on the dollar, ten mills for county and three mills for state purposes. The state tax has since been taken off real estate, but this does not affect the amount of school tax that can be levied, for the reason that it was the obvious intention of the law to fix that amount at thirteen mills on the dollar, and thus avoid the perplexing changes that would otherwise cripple the financial management of school affairs.”¹⁹

County commissioners to furnish adjusted valuation.

400. That for the purpose of enabling the board of directors or controllers to assess and apportion the tax for the ensuing school year, the county commissioners shall, when required, furnish the president or secretary of the board with a correct copy of the last adjusted valuation of proper subjects and things made taxable in the same, for state or county purposes, which said property, subjects and things are hereby made taxable for school purposes, according to the provisions of this act.²⁰

School tax limited.

401. The 29th section, of the act of May 8, 1854, P. L. 617, to which this is a supplement as above set forth, “shall not be construed to authorize the taxation of any object or property, for school purposes, which shall not be contained in the copy of the last adjusted valuation of proper subjects and things made taxable for state or county purposes, furnished to the board of directors, or controllers, by the county commissioners.”²¹

Construction of 29th section, Act of May 8, 1854.

402. “This section (29, act May 8, 1854, P. L. 617) furnishes to the board of directors a schedule of those objects upon which they may assess their tax. Now, it matters not that certain articles, found in those assessment lists, are taxable only for state, and others only for county purposes, because all are made taxable for school purposes without distinction.

19. Pa. School Laws and Decisions, 1903, page 185.

20. Act May 8, 1854, Sec. 29. P. L. 617. See *infra*.

21. Act May 8, 1855, Sec. 11, P. L. 509.

The act refers in general terms to subjects taxable for state and county purposes, in order that the valuations may be uniform, and that those made for the county commissioners may become valuations for the school assessments; uniformity is thus obtained and expense avoided. Nevertheless, these school assessments are none the less separate and independent, because based on the county and state valuations. Clearly the legislature of 1862 understood, as we do, that the act of 1854 authorized but one uniform rate of assessment on all property made subject to school tax."²²

School directors to levy a per capita tax of one dollar.

403. It shall be lawful for school directors or school controllers of any city, borough or township within this commonwealth, to levy and collect, annually, a per capita tax of one dollar for school purposes from each and every male inhabitant of the age of twenty-one years and upwards within their respective district.²³

Collection.

404. The per capita tax authorized in the first section of this act shall be levied and collected at the same time and in the same manner as school taxes are now levied and collected by law.²⁴

Per capita tax to be in lieu of occupation tax.

405. The per capita tax herein authorized shall be in lieu of the occupation tax for school purposes, and this act shall in no wise limit or abridge the power of school directors or controllers to levy a tax on real and personal property for school and building purposes.²⁵

Occupation tax, per capita tax, implied repeal of statutes, acts 1862, 1897.

406. The act of July 22, 1897, authorizing directors to levy and collect a per capita tax repeals the act of April 11, 1862, providing for the levying of an occupation tax.²⁶

22. Conyngham School District's Appeal, 77 Pa. 265, 1875.

23. Act July 22, 1897, Sec. 1, P. L. 305.

24. Act July 22, 1897, Sec. 2, P. L. 305.

25. Act July 22, 1897, Sec. 3, P. L. 305.

26. Phillips vs. Barnhart, 27 Pa. Superior Ct. 26, 1904.

Subjects not taxable.

407. All churches, meeting houses, or other regular places of stated worship, with the grounds thereto annexed necessary for the occupancy and enjoyment of the same ; all burial grounds not used or held for private or corporate profit ; all hospitals, universities, colleges, seminaries, academies, associations and institutions of learning, benevolence or charity, with the grounds thereto annexed and necessary for the occupancy and enjoyment of the same, found, endowed and maintained by public or private charity ; and all school houses belonging to any county, borough or school district, with the ground thereto annexed and necessary for the occupancy and enjoyment of the same ; and all court houses and jails, with the grounds thereto annexed, be and the same are hereby exempted from all and every county, city, borough, bounty, road, school and poor tax : Provided, That all property, real or personal, other than that which is in actual use and occupation for the purposes aforesaid, and from which any income or revenue is derived, shall be subject to taxation, except where exempted by law, for state purposes, and nothing herein contained shall exempt same therefrom : And provided, That all property, real and personal, in actual use and occupation for the purposes aforesaid shall be subject to taxation, unless the person or persons, association or corporation, so using and occupying the same, shall be seized of the legal or equitable title in the realty and possessor of the personal property absolutely.²⁷

A municipality is not subject to the general tax laws, and its property owned and used for public purposes is not taxable unless specifically made so by law.²⁸

County poor house not taxable.²⁹

Where a city owns real estate situated in an adjoining township, part of which it uses to secure the purity of its water supply, and part for the use and enjoyment of the

27. Act of May 29, 1901, P. L. 319.

28. County of Erie vs. City of Erie, 113 Pa. 360, 1886.

29. Schuylkill County vs. School Directors, 42 Pa. 21, 1862.

public as a park, such real estate is not taxable for county, school or road purposes, either by county, school district or township.³⁰

Market house, the property of a borough, is not subject to school or building tax.³¹

Public libraries, museums and art galleries exempt.³²

Tax on trust property.

408. All money now, or hereafter, to become taxable for common school purposes, and held, used or invested by any person, company or corporation in trust, for the use, benefit or advantage of any other person, company or corporation, shall only be assessed in, and subject to school tax, for the benefit of the school district within which the trustee thereof resides, or has his usual place of business; and all real estate, so taxable for school purposes, and in the charge or possession of any trustee, as aforesaid, shall be assessed in, and subject to school tax, for the benefit of the school district within which the same is situated.³³

Property held for use of minors residing in another state.

409. "Personal property held for use of minors residing in another state, is taxable for school purposes in the county where the guardian resides, and where he holds it for the minor's use, under the act of April 22, 1846."³⁴

Exonerations.

410. The board shall have the right at all times, to make such abatements or exonerations for mistakes, indigent persons or unseated lands, as to them shall appear just and reasonable; and the secretary shall enter on the minutes the names of all persons in whose favor such abatements or exonerations were made, together with the reasons therefore.³⁵

30. Reading vs. Berks County, 22 Pa. Superior Ct. 373, 1903.

31. Carlisle Borough School District vs. Carlisle Borough, 11 D. R., 294, 1901.

32. Act April 20, 1905, P. L. 234.

33. Act April 11, 1862, Sec. 7, P. L. 471

34. West Chester School District vs. Darlington, 38 Pa. 157, 1861.

35. Act May 8, 1854, Sec. 31, P. L. 617.

Section 10 of the act of 1885 provides that "exonerations may be made by the authorities and in the manner as heretofore." The method of exoneration as to school tax is provided in section 31 of the act of 1854. After the act of 1885, as well as before, exonerations are to be made by the several authorities, and in the same manner as before.³⁶

Purposes for which ordinary school tax may be used.

411. "School tax is applicable to the payment of teachers' salaries, school books and supplies, fuel, stationery for the board, salary of secretary, and all other ordinary annual expenses necessary to keep the schools in operation. Also, when there is no building tax or fund, occasional repairs and additions to furniture and apparatus are to be paid for out of the ordinary school tax."

"Debt from a former year, for school purposes, should be provided for by an addition to the ordinary school tax of the next year."³⁷

Surplus of ordinary tax may be used for payment of debts for building purposes.

412. The principal question in this case is whether any of the ordinary school taxes can be required to be applied to a debt contracted for building purposes. There is a noticeable difference between the provision in the act of 8th May, 1854, for collecting the tax for ordinary school purposes, and that for collecting the tax for building purposes. The thirty-third section, providing for the latter, declares that it shall not exceed the amount of the regular annual tax for such year, and shall be applied solely to the purpose of purchasing and paying for the grounds and the buildings or erection of buildings thereon. The sections relating to the ordinary annual tax have no restriction, except that to be inferred from the duty of keeping the schools open for at least five months in the year. The building tax cannot be diverted to ordinary purposes; but it is not a consequence that none of the ordinary taxes shall be appropriated to the payment of debts for building.

36. School District vs. Pitts, 184 Pa. 156, 1898.

37. Pa. School Laws and Decisions, 1903, page 185.
Gilbert et al. vs. Tierney, 14 Pa. C. C. 472, 1894.

We cannot perceive the justice or legal rule which would exempt the surplus of the annual taxes from the payment of debts contracted for buildings ; provided it does not prevent the schools from being kept open for (five) months in the subsequent year.³⁸

Special tax for building purposes.

413. The board of directors or controllers in cities or boroughs where the school property is vested in them agreeable to the provisions of Section 2 (Act May 8, 1854), may, at any time not oftener than once in each school year, levy a special tax not exceeding the amount of the regular annual tax for such year, to be applied solely as follows : (a) for purchasing grounds ; (b) for erecting and furnishing buildings ; (c) for the accumulation of a fund for purchasing grounds and erecting buildings ; (d) for the payment of a debt contracted in purchasing ground and erecting buildings ; (e) for completing improvements in school buildings contemplated at the time of their erection ; (f) for fencing and improving grounds in connection with the erection of buildings ; (g) for the payment of the expense of fuel used in the heating of buildings ; (h) for the payment of the expense of janitors employed to care for school buildings, which said tax shall be levied and collected at the same time in the manner and with like authority as the regular annual tax.³⁹

Building tax can only be levied when there is a levy for ordinary school purposes for the same year, and it cannot exceed such levy.

414. As the extent of a special tax in any year, is limited by the act of assembly to an amount not exceeding the regular annual tax for such year, it necessarily follows that if no regular annual tax be levied, then any attempt to levy a special tax must fail, as such tax in any amount would be in excess of the regular levy.⁴⁰

38. German Township School District vs. Sangston, 74 Pa. 454, 1873.

39. Act May 26, 1897, P. L. 94, as amending Sec. 33 of Act May 8, 1854, P. L. 617.

40. Walker vs. Edmonds, 197 Pa. 645, 1901.

It must appear that the tax was authorized.

415. Where, upon hearing, it does not clearly appear that any particular action was taken by the school board at the time the last new school building was erected by the school district, in relation to certain improvements, the court will continue a preliminary injunction to restrain the collection of a building tax until it appears that the tax levy was authorized and legal.⁴¹

Building tax not to be levied during division of township or school district or the erection of a borough.

416. Whilst proceedings are pending in any court of this Commonwealth for the division of any township or school district, or for the erection of any borough, it shall not be lawful for the school directors of the township or district proposed to be divided or out of which such borough is proposed to be erected, to levy, assess or collect any tax whatever for the purchase of ground or for building purpose except where the same shall be necessary to rebuild a school house accidentally injured or destroyed, or to pay a debt previously incurred.⁴²

The ordinary tax and the building tax to be kept separate.

417. "These two taxes are to be placed in the same duplicate, but are to be kept entirely separate, so that each taxpayer may know just how much tax is assessed against him and for what purpose. Then, too, these taxes are for separate and distinct purposes. The school tax is not applicable to the purchase of grounds and erection of school buildings, neither is the building tax to be used to pay the wages of teachers or the purchase of fuel, or for any of the ordinary expenses of keeping the schools open and in operation."⁴³

When a building tax is levied, the assessment made for that purpose must be voted, and calculated as a separate tax, and placed in the duplicate as a distinct and separate item from the assessment made for school purposes. When

41. Gilbert et al. vs. Tierney, 14 Pa. C. C. 472, 1894.

42. Act June 13, 1874, P. L. 284.

43. C. Mathewson et al. vs. School Directors, 23 Pa. C. C. 121, 1899.

collected, each fund must be applied to its lawful purpose according to its proportional rate.⁴⁴ •

Special tax must be devoted solely to purposes for which authorized.

418. The building tax levied by school directors is only applicable to certain definite purposes set out in the statute authorizing this tax.⁴⁵

The act of May 26, 1897, P. L. 94, previously cited, specifies the following purposes for which the revenue from the tax may be used :

1. Purchasing grounds.
2. Erecting and furnishing buildings.
3. The accumulation of a fund for purchasing grounds and erecting buildings.
4. The payment of a debt contracted in purchasing ground and erecting buildings.
5. Completing improvements in school buildings contemplated at the time of their erection.
6. Fencing and improving grounds in connection with the erection of buildings.
7. The payment of the expense of fuel used in the heating of buildings.
8. The payment of the expense of janitors employed to care for school buildings.

Special levy, mandamus, Act of 1835.

419. Mandamus will not lie under the act of February 28, 1835, to compel directors to levy a special tax to pay the districts' indebtedness ; the act of 1835 does not apply to school districts.⁴⁶ •

Building tax cannot be diverted to ordinary school purposes.

420. Where an attempt was made to levy and collect a building tax in one year, for the purpose of using a portion thus collected to pay a deficit in the general fund for the preceding year, the court said :

44. Pa. School Laws and Decisions, 1903, page 189.

45. *Mason vs. Caffrey*, 9 Kulp, 414, 1899.

46. *Pittston Twp. School District*, 12 Luz. 472, 1905.

"It is settled that the building tax of a school district cannot be diverted to ordinary school purposes.⁴⁷ The court was clearly right in enjoining the collection of so much of the tax levied for building purposes, as was not needed or intended to be used therefor. When levied as a building tax it must be used in good faith for that purpose alone. Although in form, it may be levied for that purpose, yet, if in fact, there is no expectation or intention of so using the greater portion thereof, such excess is without authority of law. The rights of taxpayers cannot thus be set at naught, and their property be taken from them."⁴⁸

Building tax cannot be levied for ordinary repairs, but may be for "completing improvements in school buildings contemplated at the time of their erection."

421. In *Gilbert et al. vs. Tierney*, the court said: "The continuance or dissolution of the injunction seems to turn upon the question whether or not the tax really is a building tax, or a tax to make repairs. Without stopping at this time to inquire what is included in the term building or erection of school buildings thereon, we may say it does not clearly appear that any particular action was taken by the school board at the time the last new building was erected by the school district, in relation to steam heat, nor have we before us what the action of the school board was. There can be no difficulty in giving us this information and also the time when such action occurred and the building was erected. The authorities in relation to this subject, we think, make this necessary in order that the question of the legality of the tax may be ascertained. The cases of *School District vs. Sangston*, 74 Pa. 454, and *Conner's et al. Appeal*, 103 Pa. 356, show that a building tax may not be levied for ordinary repairs only. Hence the necessity of showing what the records of the school district show in relation to this matter."⁴⁹

47. *German Twp. School District vs. Sangston* 74 Pa. 454, 1873.

48. *Conner's Appeal*, 103 Pa. 356, 1883.

49. *Gilbert et al. vs. Tierney*, 14 Pa. C. C. 472, 1894.

A special building tax may be used to lease a building and fit it up as a school house.

422: "The duties and powers of school directors are defined and regulated by the act of May 8, 1854, and its supplements. Their important duties are two in number. One is 'to establish a sufficient number of common schools for the education of every individual between the ages of six and twenty-one years, in their respective districts, who may apply for admission.' The other, as defined by the act of 1854, is 'to cause suitable lots of ground to be procured and suitable buildings to be erected, purchased, or rented, for school houses,' in which the common schools may be conducted. To provide them with the means necessary to enable them to perform these duties they are clothed by law with the power to levy and collect two distinct taxes. One of these is styled a school tax, the other a special or building tax. The school tax must be large enough so that, 'together with such additional sums as the district may be entitled to receive out of the state appropriations and from other sources, it shall be sufficient to keep the schools of the district in operation not less than four or more than ten months in the year.' The special or building tax must be levied and used to provide 'suitable buildings' for use as school houses, and cannot be lawfully diverted to any other purpose. If the general or school tax should produce a sum large enough to enable the directors to perform both duties no other tax would be necessary. If it should not, it must be supplemented by the special tax which must be devoted to the sole purpose of providing the school houses needed. Whether a special tax may be lawfully levied and collected depends on whether greater school house accommodation is needed in the district than the directors can supply with the means at their command. If such need exists the best manner in which to meet it is a question for the directors to settle in the exercise of their official discretion. The law authorizes them to meet it by the erection of a suitable building (which would include the enlargement of an existing building), by the purchase, and by the renting, of a suitable building for use as a school

house. When they decide which of these methods is best adapted to the exigency and the best interests of the district, they must next inquire whether the ordinary school tax will yield a sufficient sum of money to maintain the schools and provide the additional school house accommodation. If it will not, then the circumstances have arisen which will justify the exercise of the power to levy and collect a special tax.

“ In the case at bar it appears that the directors of Emporium School District found four hundred and nine persons applying for admission to their school. Their school house furnished accommodation for only three hundred and thirty. What should they do to provide for the eighty persons whom they could not accommodate? It was their duty under the law to make some provision for them, and they deliberated as to the best way in which to perform that duty. Their first plan was to erect a new school house of sufficient size to accommodate the whole number applying, and to supply the probable demand for some years to come ; but the expense of such a structure would make it necessary to incur a considerable debt. The question whether the debt should be contracted for this purpose was submitted to the decision of the qualified voters of the borough and their decision was against it. The directors were thus shut up to the necessity of meeting the demand upon them in a less expensive way. They decided, and, so far as we can judge from this record, decided wisely, that it was not best to enlarge a building which was old and illy adapted to the wants of the district ; nor to buy a building for a temporary purpose ; but to rent suitable rooms and fit them up for occupancy until the district should be able to make suitable permanent provisions for the scholars within its limits. Having determined what must be done they found the school tax did not provide the means of doing it. They accordingly levied a special tax to enable them to do what the law required them to do, viz., to make provision for the eighty persons applying for admission to the school for whom they had no room in the school house belonging to the district.

"In the case before us it is clearly the duty of the directors to provide for the eighty persons residing in the district and demanding admission to the public schools. They cannot make provision by the erection of a suitable building or the purchase in fee of such building, because of an existing debt which voters refuse to increase. If they cannot apply the proceeds of the special tax to the purchase of a leasehold, then they cannot perform the duty which the law has laid on them. The eighty applicants must be denied admission to the school, and the doors closed against them indefinitely. This could not have been the intention of the law-makers and we could not adopt such a construction unless the language employed by them left us no alternative. We are of opinion that the purchase of a leasehold was a proper way to provide for the persons applying for admission to the school in Emporium; and that the levy of a special tax was a proper and lawful mode of raising the money necessary to pay the price, and fit up the building for use as a schoolhouse."⁵⁰

If the tax levied is clearly in excess of the sum required for any purpose, its collection will be enjoined.

423. Even where legislative authority is given to tax for certain purposes, yet if the tax levied is clearly in excess of the sum required for that purpose, its collection may also be enjoined.⁵¹

On a bill in equity to restrain the collection of a building tax a preliminary injunction will be continued where it appears from the defendant's own testimony that only a small portion of the tax was to be used for building purposes; that the alleged purpose was to use the larger part of the tax in paying debts, although there were no debts shown which could be legally paid out of such a fund, and that the school district had large assets in the shape of sums due from former collectors and treasurers.⁵²

But "An injunction to restrain collection of an alleged excessive tax will be refused where it appears that the

50. Hackett vs. Emporium School District, 150 Pa. 220, 1892.

51. St. Clair School Board's Appeal, 74 Pa. 252, 1873.

52. Mitchell vs. Kearns, 16 Pa. Superior Ct. 354, 1901.

levy is not excessive or illegal, but necessary to the furnishing of reasonable school facilities to the pupils of the district."⁵³

Misappropriation of tax may render directors personally liable.

424. The subsequent misappropriation of a portion of the proceeds of a special tax may render the directors personally liable to the district.⁵⁴

Taxation for purposes of free public libraries.

425. It shall be lawful for said board to levy a tax for the purchase, improvement and maintenance of said library, not exceeding one mill in any one year, which tax shall be included in the tax levy made for school purposes, upon the same subjects of taxation, and shall be collected at the same time and in the same manner.⁵⁵

Where library is purchased with money of the general school fund, a library tax cannot subsequently be levied to replace the same.

426. According to the testimony of the defendants, the levy of the one mill for special purposes, complained of, was to replace in the general school fund,—so far as it would go for that purpose,—what was expended by the defendants in the year 1896, from the latter fund, for the purchase of a school library, therein causing a deficit in such fund for general school purposes, and on account of which the auditors of the school district for that year have surcharged the directors. It is to be observed, in the first place, that the act in question provides, not for a levy to pay for a library already purchased, paid for and belonging to the district, but for the purchase, improvement and maintenance of; and under the authority of Conner's Ap. 103 Pa. 356, the power of the directors to make such levy is extremely doubtful to say the least." The tax was restrained by the court.⁵⁶

53. Lehigh Coal, &c., Co. vs. Rahn School District, 9 D. R. 692, 1900.

54. Hackett vs. Emporium School District, 150 Pa. 220, 1892.

55. Act April 20, 1905, P. L. 231, amending Section 3, Act June 28, 1895, P. L. 411.

56. Lueder vs. Caffrey et al., 9 Kulp 144, 1897.

Lien of taxes.

427. All taxes which may hereafter be lawfully imposed or assessed on any property in this Commonwealth, in the manner and to the extent hereinafter set forth, shall be and they are hereby declared to be a first lien on said property, together with all charges, expenses and fees added thereto for failure to pay promptly; and such liens shall have priority to, and be fully paid and satisfied out of the proceeds of any judicial sale of said property before, any other obligation, judgment, claim, lien or estate with which the said property may become charged, or for which it may become liable, save and except only the costs of the sale and of the writ upon which it is made.⁵⁷

When and how claims must have been filed.

428. Claims for taxes must be filed in the court of common pleas of the county in which the property is situated, on or before the last day of the second calendar year after that in which the taxes or rates are first payable. Upon each tax claim a writ of scire facias must issue within five years from its filing, and verdict must be recovered or judgment entered on the scire facias within five years after it is issued. Final judgment must be entered on the verdict within five years after its recovery. After judgment is entered, it must be revived by writ of scire facias to revive the judgment; or by judgment thereon within each recurring period of five years. If a claim be not filed within the time aforesaid, or if it be not prosecuted in the manner and at the times aforesaid, it shall be wholly lost.⁵⁸

Assessment of taxes. County commissioners to furnish copy of last adjusted valuation.

429. This adjusted valuation is the basis for assessments by the board of school controllers. A levy by the board of school controllers upon an assessment made by ward assessors in 1889 would not be a valid assessment. The assessment should be made upon the valuation as adjusted by the commissioners in 1888.⁵⁹

57. Act June 4, 1901 Sec. 2, P. L. 364.

58. Act June 4, 1901, Sec. 10, P. L. 364.

59. Witherop vs. Titusville School Board et al., 7 Pa. C. C. 451, 1892.

Additional assessment made of those moving into district between last assessment and the 1st of May in each year.

430. It shall be the duty of the several assessors to assess such persons as may remove into the respective districts between the last assessment and 1st day of May in each year, or who may have been omitted from the last assessment, and to return their names, with the amount of state and county tax payable by each, to the board of school directors, who shall thereupon assess the amount of school tax payable by such persons, which tax shall be collected as in other cases; and for taking such assessment the assessor shall be paid by the county commissioners the same compensation per diem as now allowed by law.⁶⁰

Assessment in new districts.

431. At the next annual assessment after the erection of any such new common school district, it shall be the duty of the county commissioners of the proper county to cause a separate assessment of the subjects and things liable to school tax in each portion of the new district lying within his proper township to be made out by the proper assessor thereof, and to be returned to them, wherefrom, after adjustment, they shall cause to be made a correct copy of the assessment thus obtained, in every portion of the new district, and shall furnish the same to the secretary thereof, and they shall, in like manner and at the same time, cause to be made out and furnished to the state superintendent of common schools, a full list of all the taxable inhabitants of said new district, according to the provisions of the forty-ninth section of the act to which this is a supplement; and they shall pay out of the county funds to said assessors, the usual compensation for the services enjoined by this section.⁶¹

Assessment in independent districts.

432. That the assessors in each and every township, where any portion of said township may be included within the limits of an independent school district, shall write on

60. Act of April 8, 1905, P. L. 120.

61. Act May 8, 1855. Sec. 7, P. L. 509.

their duplicates, opposite the names of the persons residing within said independent district, the letters I. D., for the information of the collector of said tax and the county commissioners.⁶²

Fraudulent assessment, etc.—misdemeanor.

433. If any assessor, or assistant assessor shall knowingly and intentionally omit, neglect, or refuse to assess and return any property, person or thing made taxable by law, or shall knowingly and intentionally assess, rate or value the same, at more or less than he shall know and believe the just cash value or rate thereof, or neglect or refuse to assess any tax required by law, he shall be guilty of a misdemeanor in office, and on conviction thereof, be subject to imprisonment not less than three, nor more than twelve months, and fined in a sum not less than one hundred nor more than two hundred dollars.⁶³

Assessment of taxes in cities of the third class where the school district comprises the same territory as the city.

434. In cities of the third class where the school district comprises the same territory as the city, the taxes for school and school building purposes shall be levied on the assessment made for city purposes.⁶⁴

The city clerk or other competent person authorized by city council shall make, for the use of the school board, a true copy of the completed assessment, and shall duly certify the same to the said board.⁶⁵

This act is constitutional, *School District vs. Smith*, 195 Pa. 515, 1900.

Collection of taxes in boroughs and townships. Election of tax collector.

435. The qualified voters of every borough and township in the Commonwealth of Pennsylvania shall, on the third Tuesday of February after the passage of this act and triennially thereafter, vote for and elect one properly quali-

62. Act May 8, 1855, P. L. 509.

63. Act May 15, 1841, Sec. 3, P. L. 393.

64. Act May 25, 1897, Sec. 1, P. L. 85.

65. Act May 25, 1897, Sec. 2, P. L. 85.

fied person for tax collector in each of said districts, who shall serve for the term of three years, and shall give a bond annually to be approved by the court.⁶⁶

The act of June 6, 1893, P. L. 333, repeals the local acts of April 10, 1848, P. L. 443, and March 29, 1851, P. L. 284, so far as those acts related to the appointment of tax collectors, and tax collectors in the townships named in those local statutes are elected by popular vote, as in other portions of the state.⁶⁷

Tax collector's bond. Renewal, Act June 6, 1893.

436. A tax collector elected for three years under the Act of June 6, 1893, P. L. 333, must renew his bond annually, and liability on the bond is limited to the taxes for the current year.⁶⁸

Vacancies in office of collector of taxes, how filled, under Act June 25, 1885.

437. The courts of quarter sessions shall have power to fill, by appointment, all vacancies in the said office, within their respective counties. And, if any person elected to fill said office shall fail to give bond and qualify as hereinafter provided, on or before the fourth day of the term of said court next ensuing his election, the said court shall declare his office vacant and appoint a suitable person, residing in the proper borough or township, to fill the same.⁶⁹

Filling vacancies, under Act July 2, 1895.

438. If any vacancy shall take place in the office of tax collector after any ward, district, borough or township election, by reason of the erection of any new ward, district, township or borough, or from the neglect or refusal of any person elected to perform the duties of the office, or by death, resignation or otherwise, the court of quarter sessions of the proper county upon the petition of the town council or any citizen who is a resident of said borough, township, ward, setting forth the fact that a vacancy does exist, shall

66. Act June 6, 1893, P. L. 333.

67. Buckwalter vs. Lancaster County, 12 Pa. Superior Ct. 272, 1899.

68. Sullivan County vs. Middendorf, 7 Pa. Superior Ct. 71, 1898.

69. Act June 25, 1885, Sec. 2, P. L. 187.

appoint a suitable person to fill said vacancy for the full or unexpired term.⁷⁰

Collector to give bond and be sworn.

439. The collector of taxes shall, before he enters upon the duties of his office, take and subscribe an oath of office, and file the same in the office of the court of quarter sessions of the proper county, and shall also enter into a bond to the Commonwealth, in double the probable amount of taxes that will come into his hands, with at least two sufficient sureties ; said bond to be approved, by the said court or a judge thereof in vacation, and filed in the office of the clerk of the said court ; the condition of which bond shall be, that the said collector shall well and truly collect and pay over or account for, according to law, the whole amount of taxes charged and assessed in the duplicates, which shall be delivered to him.⁷¹

When duplicates shall be issued.

440. The several county, borough, township, school, poor and other authorities now empowered, and which may hereafter be empowered, to levy taxes within the several boroughs and townships of this Commonwealth, shall, on or before the 1st day of August of each year after the first election of collector of taxes under this act, issue their respective duplicates of taxes assessed to the collector of taxes of their respective boroughs and townships with their warrants attached, directing and authorizing him to collect the same.⁷²

Powers and liabilities of collectors.

441. The collector of taxes shall have all the power for the collection of said taxes, during his term of office, heretofore vested in collectors of county taxes under existing laws, and be subject to the same liabilities and penalties for neglect, or violation of the duties of his office.⁷³

Book to be kept and subject to inspection.

442. The collector of taxes shall provide an appropriate book, the cost of which shall be allowed to him in the set-

70. Act July 2, 1895, Sec. 1, P. L. 434.

71. Act June 25, 1885, Sec. 3, P. L. 187.

72. Act June 25, 1885, Sec. 4, P. L. 187.

73. Act June 25, 1885, Sec. 5, P. L. 187.

tlement of his accounts in which he shall enter in alphabetical order the names of all persons charged with taxes in the duplicates aforesaid, and showing the amount of such tax charged against each person, which book shall be at all times open to the inspection of each tax payer, and shall be delivered by the collector of taxes at the expiration of his term to his successor in office.⁷⁴

Public notice to be given, and a reduction made for prompt payment.

443. Where any duplicate of taxes assessed is issued and delivered to the collector of taxes, it shall be the duty of said collector to give public notice as soon thereafter as conveniently can be done, by at least ten written or printed notices to be posted in as many public places in different parts of the township or borough, that said duplicate has been issued and delivered to him; and all persons, who shall within sixty days from the date of said notice make payment of any taxes charged against them in said duplicate, shall be entitled to a reduction of five per centum from the amount thereof; and all persons, who shall fail to make payment of any taxes charged against them in said duplicate for six months after notice given as aforesaid, shall be charged five per cent. additional on the taxes charged against them, which shall be added thereto by said collector of taxes and collected by him.⁷⁵

Collector may levy upon goods for unpaid taxes, and imprison delinquent where no goods.

444. If any person shall neglect or refuse to make payment of the amount due by him for such tax within thirty days from the time of demand so made, it shall be the duty of the collector aforesaid to levy such amount by distress and sale of the goods and chattels of such delinquent, giving ten days' public notice of such sale, by written or printed advertisements and in case goods and chattels sufficient to satisfy the same with the costs cannot be found, such collector shall be authorized to take the body of such delin-

74. Act June 25, 1885, Sec. 6, P. L. 187.

75. Act June 25, 1885, Sec. 7, P. L. 187.

quent, and convey him to the jail of the proper county, there to remain until the amount of such tax together with the costs, shall be paid or secured to be paid, or until he shall be otherwise discharged by due course of law.⁷⁶

Provided that nothing herein contained shall authorize the arrest or imprisonment for non-payment of any tax of any female or infant, or person found by inquisition to be of unsound mind.⁷⁷

Collector may sue delinquent for recovery of unpaid tax.

445. The provisions of the fiftieth section of an act of the general assembly of this Commonwealth, entitled "An Act relating to the county rates and levies, and township rates and levies," passed April fifteenth, 1834, shall not be so construed as to prohibit a collector of taxes from instituting suit or suites for the recovery of taxes due and unpaid, at any time after the expiration of his warrant ; but in all cases where taxes are due and unpaid to any collector, after the expiration of his warrant, when such collector has not been legally exonerated therefrom, every such collector, or person, his executors, administrators, or any of them, is hereby declared to have full right and power to sue for any recovery of the same, with interest thereon, after the expiration of his warrant as aforesaid, from all and every person and persons, bodies politic and corporate, owing the same, as other debts of like amount are now by law recoverable.⁷⁸

"The Act of April 11, 1848, P. L. 517, Section 3, gives to the collector, after the expiration of his warrant, full right and power to sue for the due and unpaid taxes for which he has not been exonerated, and to recover the same with interest thereon as other debts of like amount are by law recoverable."⁷⁹

Days and times fixed for payment and receipt of taxes.

446. The collector of taxes shall, in person or by some person duly authorized, be in attendance for the purpose of

76. Act April 15, 1834, Sec. 21, P. L. 509.

77. Act April 15, 1834, Sec. 45, P. L. 509.

78. Act April 11, 1848, Sec. 3, P. L. 517.

79. *Creswell vs. Montgomery*, 13 Pa. Superior Ct., 87, 1900.

receiving and receipting for taxes on Thursday, Friday and Saturday of each week, during the last two weeks of said sixty days, between the hours of two o'clock and six o'clock in the afternoon, at his residence, or some other place in the proper township or borough, to be designated by him in the notice aforesaid.⁸⁰

Compensation of collectors and duties as to settlement.

447. The collector of taxes shall collect the taxes charged in said duplicates and pay over the same to the respective treasurers or authorities entitled thereto, after deducting his commission for the collection thereof, which is hereby fixed at two per centum on all taxes paid to him on which an abatement of five per centum is allowed, and at five per centum on all taxes afterwards collected : Provided, That where the total amount of taxes charged on a duplicate is less than one thousand dollars, the said collectors shall receive three per centum on all taxes paid to him on which an abatement of five per centum is allowed : Provided further, That all taxes collected within sixty days as provided in Section eight of this act, shall be paid over as aforesaid within fifteen days after the expiration of said sixty days, and all taxes thereafter collected during his term of office, shall be paid over as aforesaid at regular intervals of one month, and a full and complete settlement of all taxes collected shall be made by said tax collector with the respective treasurers or authorities entitled thereto, not later than three months after the expiration of his term of office.⁸¹

Exonerations.

448. Exonerations may be made by the authorities and in the same manner as heretofore.⁸²

Exonerations provided for by Act May 8, 1854, Sec. 31, P. L. 617.

Collector of tax to make monthly statement as to the same, and to make monthly payments of taxes collected to the treasurer.

449. Each and every collector of school taxes in the several boroughs and townships of this Commonwealth shall

80. Act June 25, 1885, Sec. 8, P. L. 187.

81. Act June 2, 1891, Sec. 2, P. L. 175.

82. Act June 25, 1885, Sec. 10, P. L. 187.

hereafter, on or before the tenth day of each and every month, after receiving the duplicate containing a statement of the school tax to be collected by him, deliver to the secretary of the board of school directors, from whom he has received such duplicate, a statement in writing, signed by him, showing the names of all the persons from whom he has collected any school taxes upon his duplicates, to and including the last day of the preceding month, the amount collected from each, and the date of such collection, and also the amount of the uncollected school taxes upon the said duplicate, and shall at the same time, if required by the secretary or any member of the school board, exhibit the duplicate, showing the said uncollected taxes, for examination; and the said tax collector shall pay over, on or before the said tenth day of each and every month during his term of office, to the treasurer of the school district, all taxes so collected by him during the preceding month, less the commission or fees to which he is by law entitled for the collection of the same.⁸³

Board of school directors and collectors shall meet together annually.

450. Board of directors and collectors of taxes to meet (on the first Monday of February of each year to ascertain the amount of unpaid taxes—and the collector must pay over the whole amount of balance on or before the first Monday of June thereafter).

It shall be the duty of the board of school directors and the collector of the school taxes, in each of the boroughs and townships of this Commonwealth, to meet together, at the usual meeting place of the said school board, on the first Monday of February of each and every year, and examine the duplicate of the school taxes, which the said collector is hereby required to produce and exhibit to the said board of school directors, and ascertain the amount of the taxes then uncollected; and it shall be the duty of every such collector, on or before the first Monday of June thereafter, to collect, and pay to the treasurer of the proper school dis-

83. Act April 21, 1903, Sec. 1, P. L. 229.

trict, the whole amount of the balance of the taxes charged and assessed in the said duplicate, excepting such sums from which the said school directors, in their discretion, may exonerate him.⁸⁴

Directors liable if they make an unlawful settlement.

451. If school directors make an unlawful settlement with a tax collector, the directors will, themselves, be liable personally to the district for the loss.⁸⁵

Failure to pay taxes collected, to make monthly statements or to exhibit duplicate a misdemeanor.

452. Any tax collector who shall fail to pay over to the treasurer of the proper district the taxes collected by him, according to the provisions of this act, or who shall fail to make and deliver to the secretary of the board of school directors any of the statements in writing required by this act, or who shall fail to produce and exhibit the duplicate of the school taxes to the secretary of the board of school directors or at a meeting of the board of school directors, as required by the provisions of this act, shall be guilty of a misdemeanor, and on conviction thereof shall be sentenced to pay a fine not exceeding one hundred dollars.⁸⁶

Collector to pay taxes collected to officer legally entitled.

453 Tax collectors cannot, by mandamus, be compelled to pay taxes collected by them to any body other than the officer legally entitled to receive them.

It is no part of a tax collector's duty to pay orders on the township treasurer.⁸⁷

Misappropriation of tax funds embezzlement.

454. If any person charged with the collection, safe keeping, or transfer of any state, county, township, school, city, borough or municipal taxes, under any law or laws of this Commonwealth, shall convert or appropriate the moneys so collected, or any part thereof, to his own use in any way whatever, or shall use by way of investment in any kind of

84. Act April 21, 1903, Sec. 2, P. L. 229.

85. *Mason vs. Caffrey et al.*, 9 Kulp 414, 1899.

86. Act April 21, 1903, Sec. 3, P. L. 229.

87. *Hoover vs. Reap*, 10 Kulp 59, 1899.

property or merchandise any portion of the money so collected by him from such tax or taxes, and shall prove a defaulter or fail to pay over the same or any part thereof at the time or times, place or places, required by law and to the person or persons legally authorized to demand and receive the same, every such act shall be deemed and adjudged to be an embezzlement of so much of said money as shall be thus taken, converted, appropriated, embezzled, invested, used, or unaccounted for, which is hereby declared a misdemeanor; and every such tax collector and every person or persons whomsoever aiding or abetting, or being in any way accessory to such act, and, being thereof convicted, shall be sentenced to an imprisonment not exceeding five years, or pay a fine not exceeding five thousand dollars, or both at the discretion of the court.⁸⁸

Judgment against collector for an amount due from him.

455. The secretary of any board of directors or controllers may, at any time within one year from the delivery of the duplicate of school tax to the collector thereof, file a certificate, signed by the president and attested by the secretary, in the office of the prothonotary of the court of common pleas of the proper county, stating the amount of said tax due and unpaid by said collector, at the date thereof, and it shall be the duty of the prothonotary to enter the same on his docket, which certificate shall, from such entry, have the same operation and effect as a judgment of said court, against said collector and his sureties, and execution may issue thereon, in like manner as in judgments, for the amount remaining unpaid at the date of said execution.⁸⁹

Section 13, Act April 11, 1862, not affected by act June 25, 1885.

456. There is nothing in the act of 1885 which "interferes with the reasonable operation of Section 13 of the act of 1862, the primary purpose of which was security and protection of the school district, by means of a lien against the real estate of the collector and his sureties. After the act of 1885, as well as before, exonerations are to be made by the

88. Act June 3, 1885, P. L. 72.

89. Act April 11, 1862, Sec. 13, P. L. 474.

several authorities, and in the same manner as before. As to the execution that may issue on the judgment against the collector and his sureties, the court will control that, as was done in this case, pending the consideration of any alleged legal or equitable defense. If accounts settled by the auditors show amounts different from those named in the certificate of the school board, the court would not fail to limit the execution accordingly. The acts under consideration taken together, form a complete and harmonious system for the security and collection of the school fund, and present no points of antagonism that will interfere with their proper enforcement.⁹⁰

Settlement of accounts.

457. The accounts of collectors of taxes shall be settled by township or borough auditors of the proper township or borough, and he shall state a separate account for each different tax collected by him.⁹¹

There is nothing in this that interferes with the reasonable operation of Section 13 of the act of 1862, the primary purpose of which was security and protection of the school district, by means of a lien against the real estate of the collector and his sureties.⁹²

Suit on bond cannot be entered until after settlement by auditors.

458. Until the accounts of township tax collectors are settled by the township auditors and an amount ascertained by such auditors to be due by such collectors, a proceeding at law upon the official bond is premature and unauthorized.⁹³

Suit on bond properly brought in assumpsit.

459. A suit on the bond of a tax collector is properly brought in assumpsit and the averments of the statement are sufficient when it assigns with certainty the failure to pay or account for a definite sum claimed as the balance of the taxes in the duplicate for a given year.⁹⁴

90. School District vs. Pitts., 184 Pa. 156, 1898.

91. Act June 25, 1885, Sec. 11, P. L. 187.

92. School District vs. Pitts., 184 Pa. 156, 1898.

93. Swatara Twp. School District's Appeal, 1 Pa. Superior Ct. 502, 1896.

94. Commonwealth vs. Gruver, 13 Pa. Superior Ct., 553, 1900.

Collector bound by auditor's settlement when he does not appeal.

460. The township auditors' settlement of the tax collector's accounts is but one step in fixing the liability of the collector, but when it is not appealed from to the court of common pleas as provided by law, he elected to make that step a final one and to be bound by it, and the appellate court cannot review it on appeal from a judgment entered on the surety's bond.⁹⁵

Taxes charged upon unseated lands.

461. Taxes charged upon unseated lands shall not be collected by the collector of taxes, but shall be certified and returned by the several authorities levying the same to the county commissioners to be collected as heretofore.⁹⁶

Repeal. Application of act June 25, 1885.

462. So much of all general acts heretofore passed, as is inconsistent herewith, is hereby repealed, but this act shall not apply to any taxes, the collection of which is regulated by local law.⁹⁷

The act of June 25, 1885, does not repeal the act of 1854.

463. The act of 1885 "does not undertake to provide a complete system for the collection of taxes, different from and independent of the method provided in the act of 1854. On the contrary the act of 1885 recognizes and expressly makes use of the machinery of the act of 1854. In section 4, the several school and other authorities empowered to levy taxes, etc., are required to issue duplicates to the collectors so elected. The school taxes are assessed under the provisions of sections 28, 29, 30 and other sections of the act of 1854. Section 10 of the act of 1885 provides that 'exonerations may be made by the authorities and in the same manner as heretofore.' The method of exoneration as to school tax is provided in section 31 of the act of 1854. For these

95. Commonwealth vs. Gruver, 13 Pa. Superior Ct. 553, 1900.
Swatara Twp. School District's Appeal, 1 Pa. Superior Ct. 502, 1896.
Commonwealth vs. Titman, 148 Pa. 168, 1892.
Commonwealth, vs. Sweigart, 9 Pa. Superior Ct. 455, 1899.

96. Act June 25, 1885, Sec. 12, P. L. 187.

97. Act June 25, 1885, Sec. 13, P. L. 187.

and other reasons we think the act of 1885 does not repeal the prior legislation by providing a new and complete system for the collection of taxes, different from and independent of theretofore existing provisions.⁹⁸

Act June 25, 1885, regulating collection of certain taxes, is constitutional.

464. The act of June 25, 1885, P. L. 187, regulating the collection of taxes in the several boroughs and townships in this Commonwealth is constitutional.⁹⁹

Collection of taxes in cities of the third class.

465. The annual assessment of school taxes shall be completed on or before the first day of June, in each and every year,¹⁰⁰ and, upon the duplicate or duplicates having been made, as directed by the said board of school controllers the same shall be placed in the possession of the treasurer, who shall collect and receive said taxes . . . ; and the said school taxes, unpaid after the first day of August and the first day of October, in each and every year, shall have the same additional sum per centum added thereto, as is hereinbefore provided in the case of unpaid city taxes, after the first day of October, in each and every year; said duplicates shall be placed in the hands of collectors, to be appointed as directed in section 38 of this act; the said taxes shall be applied only to the purposes of the said school district and be disbursed only on the warrant of the president and secretary of the board of school controllers, countersigned by the city controller.¹⁰¹

Treasurers of cities of the third class shall ex-officio be school treasurers.

466. The several city treasurers, hereafter elected in cities of the third class of this Commonwealth, by virtue of their office shall be the collectors of all the city, school and poor taxes, assessed or levied in their respective cities, and

98. *School District vs. Pitts.*, 184 Pa. 156, 1898.

99. *Swatara Twp. School District's Appeal*, 1 Pa. Superior Ct., 502, 1896.

100. See *Supra*, Sec. 434, that in cities of the third class the taxes are to be levied upon the city assessment. Sec. 1, 2, Act May 25, 1897, P. L. 85.

101. Act May 23, 1874, Sec. 43, P. L. 230.

shall perform the duties and be subject to the hereinafter provisions of this act.¹⁰²

Levying taxes in cities of the third class.

467. The several city school and poor authorities, now empowered or which may be hereafter empowered to levy taxes upon persons and property within the said cities of the third class, shall, on the first day of June in each year, make out and deliver their respective duplicates of taxes assessed to the said city treasurer, as the collector of the said several taxes, which taxes shall be collected by the said city treasurer, by virtue of his office as herein provided ¹⁰³

School taxes to be collected.

468. The school taxes which shall be collected under the provisions of this act are the school taxes only which are levied by the boards of school controllers, organized and acting under and in pursuance of the act of assembly . . . providing for the incorporation and government of cities of the third class.¹⁰⁴

102. Act June 20, 1901, Sec. 1, P. L. 578.

103. Act June 20, 1901, Sec. 3, P. L. 578.

104. Act June 20, 1901, Sec. 8, P. L. 578.

CHAPTER XVIII.

AUDITORS.

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Auditors to settle annually the accounts of school treasurer. Appeal.

469. It shall be the duty of the borough and township auditors, in addition to the duties now imposed upon them, by law, to settle annually the accounts of the school treasurers of the different school districts in this Commonwealth; and that either party may take an appeal, as now provided for in other cases of settlement of accounts by township auditors: Provided, That this act shall not apply to the city and county of Philadelphia.¹

Auditors in independent school districts. Election.

470. There shall be elected in each independent school district of this Commonwealth three auditors, one to serve

¹ Act May 21, 1857, Sec. 1, P. L. 631.

for one year, one for two years and one for three years, and annually thereafter, one each year, to serve for the term of three years, to audit and adjust the several school accounts of said district.²

Duties.

471. The auditors in said independent school district shall be qualified and shall perform the duties as township and borough auditors are now required by law to do.³

Compensation.

472. The compensation of each independent school district auditor shall be two dollars per diem for each day necessarily employed in the duties of his office, which shall be paid out of the school funds of said district.⁴

Auditors to meet annually on first Monday of June.

473. The auditors of the several townships and boroughs within this Commonwealth shall meet annually on the first Monday of June, and oftener, if necessary, and shall audit, settle and adjust the accounts of the supervisors, road commissioners, school, borough and township treasurers, as may by law be referred to them.⁵

Presentation of claims.

474. An itemized claim must be presented to the auditors for adjudication. If the school treasurer either refuses to go before the auditors, or goes before them without legal proofs of his claims, and upon a bare assertion, without items and without dates, that he is entitled to a lumping credit, the auditors ought to disallow his claim, and on appeal he ought not to be allowed to prevail, unless, indeed, he accounts for his conduct, and produces to the jury better evidence than he had before the auditors, and which if produced before them, would have entitled him to his credits.

Power of auditors to compel the attendance of witnesses.

475. To and in the performance of the duties imposed the power is given to the auditors to compel the attendance

2. Act May 10, 1893, Sec. 1, P. L. 41.

3. Act May 10, 1893, Sec. 2, P. L. 41.

4. Act May 10, 1893, Sec. 3, P. L. 41.

5. Act April 24, 1874, Sec. 1, P. L. 112.

of all parties and witnesses, and the production of books and papers, and to administer oaths and affirmations.⁶

Two settlements of district accounts contemplated. Method as to treasurer's account.

476. "Two settlements of the district accounts are evidently intended to be made annually; one by the board, of the accounts of the treasurer, and the other by the district auditors, of the accounts of the treasurer and tax collector."

"The auditors are to charge the treasurer with the amount received by him, according to his own statement, and are then to allow every voucher produced by him, which on its face appears to be for a legal object within the jurisdiction and control of the board."⁷

Auditors cannot control expenditures made by directors.

477. "The auditors have no authority to control the board in the expenditure of the district funds so long as confined to legitimate objects, except, perhaps, in cases in which the prices paid are so enormous as to show by their amount that they are fraudulent."⁸

Auditors to settle accounts of collector of taxes.

478. The accounts of collectors of taxes shall be settled by township or borough auditors of the proper township or borough, and he shall state a separate account for each different tax collected by him.⁹

Accounts of a tax collector or school treasurer not settled at the proper time may be settled by auditors of subsequent years.

479. "If the account of a school treasurer has not been previously audited it might be considered and adjusted by the auditors of a subsequent year. If the account of a township officer is not audited at the regular time, both the auditors and officer must be at fault; for the auditors have power to compel a settlement, and while it may not be the

6. Act April 15, 1834, Sec. 105, P. L. 537.
Act April 15, 1834, Sec. 50, P. L. 537.
Act April 15, 1834, Sec. 51, P. L. 537.

7. School Laws and Decisions, 1903, page 216.

8. School Laws and Decisions, 1903, page 217.

9. Act June 25, 1885, Sec. 11, P. L. 187.

officer's duty to take the first step, he disregards a moral obligation at least if he is not himself at pains to have his account properly examined. It would be unreasonable that the township should suffer because its officers have been at fault, when it is easy to correct their neglect by an effort made in due season. It may be true that the lapse of a considerable time, alone or aided by other circumstances, might give rise to a presumption of settlement although no formal adjustment could be shown, or might make it plain that the proposed inquiry would be inequitable or unjust."¹⁰

School directors to furnish annual statement of account to auditors.

480. It shall be the duty of each board of school directors, in the several school districts of this Commonwealth, annually, at the close of the school year, to place in the hands of the proper auditors a full certified statement, itemized, of their receipts and expenditures for the past year, including the assets and liabilities of the district of all kinds, with all books, papers and vouchers relating to the same, to be by said auditors examined and if found to be correct approved; such statement to be spread upon the minutes of the board of directors, and in a condensed but fully classified form published by said board in not less than ten written or printed handbills to be put up in the most public places in the district, or if deemed preferable in the two newspapers of the county in which the district is situated having the largest circulation among the citizens interested; and for any neglect or failure to perform the duties enjoined by this act, the officers named therein shall be considered guilty of a misdemeanor, punishable by a fine not exceeding three hundred dollars, to be paid into the school fund of the district in which the offence shall have been committed."¹¹

Directors may be compelled to furnish statement to auditors.

481. "The directors, under the Act of May 1, 1876, P. L. 91, Sec. 1, are compelled to submit an itemized state-

10. Swatara Township School District vs. Geesey, 7 D. R. 173, 1897.

Baer vs. Weaver, 3 Kulp 57, 1884.

11. Act May 1, 1876, Sec. 1, P. L. 91.

ment of their receipts and expenditures to the township auditors, . . . which, if correct, the auditors approve.”¹²

But they cannot be compelled to furnish statement of predecessors.

482. School directors may be compelled by mandamus to submit an itemized statement of their receipts and expenditures to the proper board of auditors. They cannot be compelled to furnish such statement of the receipts and expenditures of their predecessors in office, who must answer for themselves.¹³

Report of auditor. Auditors required to publish statement of accounts and file copy.

483. The auditors of the several townships and boroughs within this Commonwealth are hereby authorized and required to publish, by posting handbills, either written or printed, in at least five public places within their respective townships or boroughs, an itemized annual statement of the receipts and expenditures of the borough councils, road commissioners, supervisors, overseers of the poor and school directors for the year preceding the annual settlement for their respective districts ; said handbills to be posted within ten days after such settlement; and further, it shall be the duty of said auditors to file a copy of the same with the town clerk in their respective districts, and also with the clerk of the court of quarter sessions, which shall be at all times subject to inspection by any citizen thereof: Provided, That where any two of said offices shall be exercised by the same persons only one statement shall be required : Also provided, That nothing in this act shall be construed to interfere with the present law which requires annual statements of the receipts and expenditures of the borough councils, road commissioners, supervisors, overseers of the poor and school directors to be advertised in the daily and weekly newspapers published in the respective localities.¹⁴

12. . . Mason vs. Caffrey et al., 9 Kulp 414, 1899.

13. Baer vs. Weaver et al., 3 Kulp 57, 1884.

14. Act April 23, 1874, Sec. 2, P. L. 112.

Failure to take oath does not vacate office.

484. "It is true, the act of assembly requires they shall, before entering upon the duties of their office, take and subscribe an oath; and also imposes penalties for a violation of this requirement; but it does not declare that the omission to take the oath shall ipso facto vacate their offices. It requires judicial action, instituted for that purpose, to produce such result.¹⁵

Penalty for neglect of duty.

485. In case of neglect or refusal to comply with the provisions of this act, the auditors so neglecting or refusing shall each pay a penalty of twenty dollars, to be recovered in the same manner as debts of similar amount are by law recoverable, by suit instituted in the name of the school district upon complaint of any tax-paying citizen of the same, and the proceeds thereof to be paid into the school treasury of said district.¹⁶

Compensation.

486. The compensation of each borough and township auditor shall be two dollars per diem for each day necessarily employed in the duties of his office: Provided, This act shall not interfere with or change any local or special law, where a larger amount than two dollars per day is authorized to be paid.¹⁷

Settlement of auditors conclusive, unless appealed from.

487. The first section of the Act of May 21, 1857, P. L. 631, authorizes borough auditors to settle the accounts of school treasurers, with the right of appeal therefrom, to either party. Unless appealed from, such settlement is conclusive.¹⁸

The account of a school treasurer was settled by the township auditors, and a balance was struck in his favor. In the settlement, among other credits, was contained an item of \$75.00, through which a line was drawn, but the

15. Shartzter vs. School Board, 90 Pa. 192, 1879.

16. Act April 24, 1874, Sec. 3, P. L. 112.

17. Act May 4, 1889, Sec. 1, P. L. 86.

18. Shartzter vs. School Board, 99 Pa. 192, 1879.

balance including it was not altered. The balance on this account by the township auditors. More than six years after the treasurer went out of office, it was alleged that the item of \$75.00 had not been paid by him, and suit was brought against him by the then school directors for the amount of the item.

It was held that the settlement by the township auditors of the account of the treasurer of a school district, is conclusive unless on appeal. It was held further, that six years having elapsed since the treasurer went out of office before suit brought, he was protected by the statute of limitations.¹⁹

Appeal from settlement of auditors.

488. It shall be lawful for the township, or the officer accounting, to appeal from such settlement to the court of common pleas of the same county, within thirty days after such settlement, whereupon the court may direct an issue to determine disputed facts if necessary: Provided, That no appeal by such officer shall be received, unless the appellant shall enter into a recognizance, with two sufficient sureties, conditioned to prosecute the appeal with effect, and to pay all costs accruing thereupon.²⁰

Tax payer may appeal from auditor's report.

489. Hereafter any tax payer of or in any school district in this Commonwealth, whether a resident or non-resident tax payer, may make in behalf of the school district the appeal allowed by the first section of the act, entitled "A supplement to an act for the regulation and continuance of a system of education by common schools," passed the twenty-first day of May, eighteen hundred and fifty-seven, within the time allowed, as in other cases of appeals from the reports of township auditors: Provided, That the tax payer appealing shall enter into a recognizance with one or more sufficient sureties, conditioned, that the party appealing will prosecute said appeal with effect, and that said party will pay all costs that may accrue thereon, in case the party

19. Porter vs. School Directors, 18 Pa. 144, 1851.

20. Act April 15, 1834, Sec. 104, P. L. 538.

appealing fail to obtain a final decision more favorable to the school district wherein the decision, from which the appeal was taken, was made.²¹

Exceptions to rulings of the court in pending appeals.

490. Hereafter in all cases pending and undetermined in any court of common pleas in this Commonwealth, which are appeals from settlements or reports made by county, borough or township auditors, it shall be lawful for any party to except to any ruling or decision of the court upon any question or point of law that may arise ; and an appeal may be taken therefrom to the Superior or Supreme Court : Provided, That such exceptions and appeals shall be governed and regulated by the laws now in force, regulating exceptions and appeals to the Supreme and Superior Courts in civil cases.²²

A township auditor, although ineligible to the office of school director, may elect which office he will hold.²³

21. Act June 24, 1885, Sec. 1, P. L. 162.

22. Act May 11, 1901, Sec. 1, P. L. 185.

23. Commonwealth vs. Whitlock, 12 D. R. 791, 1903.

CHAPTER XIX.

DISTRICT SCHOOL LIBRARIES.

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Establishment of district libraries. Directors to select school house and provide cases.

491. Whenever, by subscription, or otherwise, a collection of books or funds, to purchase the same, shall have

been obtained, to form a public library, in and for any common school district in this Commonwealth, it shall be the duty of the board of directors thereof, for the time being, to select the most suitable school house therein in which said library shall be placed, preferring if otherwise expedient, the school house in which the district institute is held, and to provide, out of the school funds of the district, a suitable case, or cases, for said library, and for such additional books as may be annually added thereto.¹

Board to receive money. Purchase of books. Annual accounts.

492. It shall be the duty of the said directors, to receive into the district treasury all moneys contributed, or otherwise obtained for the purchase, or increase, of the district library, and to select and purchase the books therefor, or to appoint a committee of the board, or of not less than three citizens of the district, to make such selection and purchase; and also, from time to time thereafter, to make additional selections and purchases, in the same manner, but that no books shall be donated, or placed in said library, without the approbation and consent of the selecting committee; nor shall the proper board of directors appropriate any of the school funds of the district to the purchase of books for the library, except such works of a strictly professional character, as shall be necessary and proper for the study and improvement of the teachers of the proper district; and all moneys received by said board, for library purposes, shall be annually accounted for, at the settlement of its accounts, in the same manner as common school funds are now by law accounted for.²

Title. Larceny of books, etc. How punishable.

493. The legal possession and ownership of the books, cases and other appendages of the district library shall be and remain in the proper board of directors, and their successors in office, as trustees for the district; and that the felonious taking and carrying away thereof, or of any part thereof, or of any book, article of apparatus or furniture, from or

1. Act May 5, 1864, Sec. 1, P. L. 826.

2. Act May 5, 1864, Sec. 2, P. L. 826.

belonging to any common school house, shall and is hereby declared to be larceny; and the breaking into a common school house at night, with intent to commit larceny, as herein set forth, or any other felony, shall and is hereby declared to be burglary; and that any larceny or burglary so committed shall be punished as in other cases under existing statutes.³

Use of books regulated. Liability for lost books.

494. Any person over twelve years of age and resident in the proper district, whether contributor or not to the library, shall be entitled without charge to the use of the books thereof, according to the rules and regulations thereof; but that no book shall be issued to any minor, nor, without the order of his or her parent, guardian or master, who shall thereupon become liable to all the penalties for the abuse, loss or undue detainment of any book by said minor; and all entries of the issue of books duly made in the library list, by the librarian at the time of such issue, shall be prima facie evidence thereof in a suit for any penalty or for the value of any book.⁴

Rules and regulations to be established.

495. The proper board of directors and their successors in office, shall make, and from time to time as shall be proper, alter and amend the necessary rules and regulations for the care, issue, use and return, of the books of the district library, and ordain such penalties for the abuse, loss, or undue detainment thereof, as to them shall seem just and proper; which penalties shall be recoverable, as debts of like amount are now, by law, recoverable; and such penalties shall either be payable to the librarian, in compensation of his services, or into the library fund, as the proper board of directors shall determine.⁵

Librarian. Settlement.

496. The secretary of the proper board of directors, or such other member as the board may select, shall be the

3. Act May 5, 1864, Sec. 3, P. L. 826.

4. Act May 5, 1864, Sec. 4, P. L. 826.

5. Act May 5, 1864, Sec. 5, P. L. 826.

general librarian of the district library, and that the principal teacher of the school, held in the house in which the library is kept, shall be the assistant librarian, while in charge of said school ; and while so in charge, such assistant librarian shall have the charge of the library, so far as relates to the care, issue and return, of books, and the keeping of the list thereof ; but that neither the librarian, as secretary, nor the assistant as teacher, on going out of office, shall receive his final installment of salary, till he shall have first accounted for all the books belonging to the library, to the satisfaction of the proper board.⁶

Duties of directors. Selection of books.

497. When the pupils or other persons connected with any common school shall have procured books, or funds for the purchase of books for a school library therefor, it shall be the duty of the directors of the proper district to provide out of the school funds of the district a suitable case therefor and also for such additions as may subsequently from time to time, be made thereto ; and the selection and purchase of the books for such school library, and of all additions thereto, shall be made by a committee composed of the teacher of the school, for the time being, and of not less than two parents of pupils attending such school, to be chosen by all the attending pupils ; but that **no** books shall be donated to or placed in said library, without the approval of the proper selecting committee, and that it shall not be lawful for the board of directors to appropriate any of the funds of the district to the purchase of books for said school library.⁷

Use of books.

498. All pupils of the proper school, and no other, shall be entitled to the use of the books of said library at their homes, subject to such rules relating to the care, use and return thereof, as the aforesaid committee for the selection and purchase thereof shall from time to time establish ; and that one of the pupils, of said school, to be selected by

6. Act May 5, 1864, Sec. 6, P. L. 826.

7. Act May 5, 1864, Sec. 7, P. L. 826.

the other pupils, with the consent of the selecting committee aforesaid, shall be the librarian of the school library.⁸

Legal possession. Ownership. Issue list.

499. The legal possession and ownership of the school library shall be in the proper board of directors; the felonious taking thereof shall be larceny; the issue list thereof shall be prima facie evidence of delivery, and the penalties for the abuse, loss or detention of books, shall be recoverable as hereinbefore provided in the case of district librarian.⁹

Gifts and Bequests.

500. It shall be lawful for the common school directors, of any district to receive, hold and use, any devise, bequest, gift, grant or endowment of property, whether real or personal, which may be made to them for the establishment, increase or support, either of a district, or of a school library in existence or to be established under the provisions of this act, and the same to apply to the establishment, increase and efficiency thereof, subject, however, to any terms, conditions or restrictions, attached to such devise, bequest, gift, grant or endowment, and not inconsistent with the purposes of this act; and the said directors and their successors in office, shall have authority to bring suit and do all other things necessary for the recovery, use and application of the same to the purposes aforesaid.¹⁰

The several school districts of the Commonwealth, except cities of the first and second class, may establish and maintain a free public library.

501. For the purpose of securing a system of free, non-sectarian, public libraries on a substantial and permanent basis throughout the Commonwealth, authority is hereby given to the board of school directors, or to any board or organization having control of the common schools, in each and every common school district, except in cities of the first and second class, whenever the same may be decided

8. Act May 5, 1864, Sec. 8, P. L. 826.

9. Act May 5, 1864, Sec. 9, P. L. 826.

10. Act May 5, 1864, Sec. 10, P. L. 826.

upon by a majority vote of all the members thereof, to provide a place for and establish and maintain such public library for the general use of the residents in the district, subject to the ensuing provisions of this act.¹¹

School houses may be used.

502. The board may set aside the whole or a portion of any school house, now or hereafter erected, within the district for the uses and purposes of such library, having due regard to the convenience of the citizens, and may make any changes, repairs or additions that may be necessary to properly carry out the objects of this act; or at its option may lease, purchase or erect a suitable building in some convenient location for the use, storage and accommodation of such library, but no land or structure shall be purchased or building commenced until the cost thereof has been fully provided for under the laws regulating the erection of new school houses within the district.¹²

Taxation for free public libraries.

503. It shall be lawful for said board to levy a tax for the purchase, improvement and maintenance of said library, not exceeding one mill in any one year, which tax shall be included in the tax levy made for school purposes, upon the same subjects of taxation, and shall be collected at the same time and in the same manner.¹³

Gifts and endowments, etc., for library.

504. It shall be lawful for the school board of any common school district, and their successors in office, to receive and hold, free from all collateral inheritance tax, any devise, bequest, grant, endowment, gift, donation or contribution of property real, personal or mixed which shall be made for the establishment, improvement or maintenance of a public library as herein provided for, and the same to apply to the purpose for which made or given, and said board, or their successors in office, are hereby authorized to

11. Act June 28, 1895, Sec. 1, P. L. 411.

12. Act June 28, 1895, Sec. 2, P. L. 411.

13. Act April 20, 1905, Sec. 3, P. L. 231. Amending Sec. 3, Act June 28, 1895, P. L. 411.

bring suit and do all necessary acts for the recovery, holding, use and application thereof: Provided, That this act shall not apply to cities of the first class: Provided, further, That in cities which have established a board of trustees for the management of a free library established by said municipality, any land or buildings appropriated to free library purposes under the operation of this bill shall be under the control of said board of trustees.¹⁴

Repeal.

505. All laws or parts of laws inconsistent herewith are repealed.¹⁵

Distribution of library.

506. In addition to the authority now vested in any board of school directors to establish one central library, under the provisions of the act to which this is a supplement,¹⁶ the school directors, board, or organization having control of the common schools of any district, may, at their option, divide and distribute among the various schools of the district any library which has been or which shall be hereafter established in any school district under the provisions of the aforesaid act, in such manner and subject to such regulations as may seem wise and proper to the school directors, board, or organization having control of the district in which said library is established.¹⁷

School boards may take private property for public library purposes.

507. It shall be lawful for, and the right is hereby conferred upon borough councils and also on school boards of this Commonwealth, to purchase, acquire, enter upon, take, use and appropriate private property for the purpose of using, enlarging or extending grounds now used or which shall hereafter be used for public library purposes, within the corporate limits thereof, by ordinance or resolution as may be determined thereon.¹⁸

14. Act June 28, 1895, Sec. 6, P. L. 411.

15. Act June 28, 1895, Sec. 7, P. L. 411.

16. Act June 28, 1895, P. L. 411.

17. Act of May 11, 1901, P. L. 179.

18. Act May 11, 1901, Sec. 1, P. L. 169.

Damages. Viewers. Notice of meeting.

508. Whenever any borough council or school board, in the exercise of the right so conferred, has acquired, taken, used, or appropriated, or shall hereafter acquire, take, use and appropriate, private property for public library purposes, and said borough council or school board cannot agree with the owner or owners thereof, lessee or lessees of such private property, upon the compensation for the property and damages done, or when by reason of the absence or legal incapacity of any such owner or owners, lessee or lessees, no such compensation can be agreed upon ; the court of common pleas of the proper county, or any judge thereof in vacation, on application thereto by petition by said borough council or school board, or such owner, lessee, or any person interested, shall appoint three discreet, disinterested citizens of said county as viewers, to view and ascertain the damages done by reason of such taking, use, appropriation, occupancy or injury, and shall appoint a time, not less than twenty nor more than sixty days thereafter, for said viewers to meet at or upon the premises where the damages are alleged to be sustained or the property taken, of which time and place ten days notice shall be given by the petitioner to said viewers and all parties interested by personal service, when such service can be obtained, otherwise by public notice in one or more newspapers, or by handbills posted on the premises, or in such other manner as said court may direct.¹⁹

Duty of viewers. Report to court. Judgments.

509. The viewers, or any two of them, having been duly sworn or affirmed faithfully, justly and impartially to decide and a true report make concerning all matters and things to be submitted to them, and in relation to which they are authorized to inquire into in pursuance of the provisions of this act, and having viewed the premises or examined the property, shall estimate and determine the quantity, quality and value of the land or property so entered upon, used, appropriated or injured, as the case may be ; and having a due

19. Act May 11, 1901, Sec. 2, P. L. 169.

regard to, and making a just allowance for, the advantages which may have resulted or which may seem likely to result to the owner or owners of said land or property, in consequence of the taking, enlarging or extending of such public library grounds, and after having made a fair and just comparison of said disadvantages and advantages to which the owner or owners may receive to any nearby property, they shall estimate and determine whether any, and if any what amount of damages has been or may be sustained, and to whom payable, and make report thereof to said court.

If any damages be awarded, and the report of said viewers be confirmed by said court, judgment shall be entered thereon; and if the amount thereof be not paid within sixty days after the entry of such judgment, then judgment shall be collected by due legal process, as other judgments are collected from borough councils or school boards.²⁰

Appeal from award of viewers. Trial by jury.

510. Upon the report of said viewers or any two of them, any party interested may, within twenty days thereafter, file an appeal from said report to said court, in writing and accompanied with an affidavit that the same is not for the purpose of delay, but because the affiant firmly believes that injustice has been done; and after such appeal, either party may put the cause at issue, in the form directed by said court, and the same shall be tried by said court and a jury, and after final judgment, either party may appeal to the superior or supreme court, under the provisions and in the manner prescribed in other cases.²¹

Notices.

511. The said court of common pleas shall have power to order what notices shall be given in connection with any of the proceedings, and may make all such orders as it may deem requisite.²²

Compensation of viewers.

512. The costs incurred in the proceedings shall be defrayed by said borough council or school board; and each

20. Act May 11, 1901, Sec. 3, P. L. 169.

21. Act May 11, 1901, Sec. 4, P. L. 169.

22. Act May 11, 1901, Sec. 4, P. L. 169.

of the viewers shall be entitled to receive a sum not exceeding five dollars per day; or such compensation as the said court shall decide upon, not exceeding five dollars per day, for every day necessarily employed in the performance of their duties.²³

**School directors may extend aid to libraries already established.
Taxes.**

513. In any school district, except cities of the first and second class, wherein there is or shall hereafter be established, otherwise than under the provisions of the act to which this is a supplement, a free non-sectarian public library, the school directors, board or organization having control of the common schools of said district may, instead of establishing another public library and providing for its government, extend aid to such library on such terms as to control and management as shall be agreed upon between the managers thereof and the school authorities, and for that purpose may levy the taxes provided for in the act to which this is a supplement in the manner provided therein.²⁴

Managers' annual report. Accounts to be audited.

514. The managers of any public library receiving aid under this act shall annually report to the school board furnishing such aid an account of the expenditure of the money so received, under the oath of the managers or their secretary and treasurer, and such account shall be subject to the jurisdiction of the auditors by whom the accounts of the school board are audited in like manner as their accounts.²⁵

Adjoining townships may establish libraries. Aid to existing library. Agreement. Tax levy.

515. When any township surrounds and immediately adjoins any borough within this Commonwealth, within either of which there is or shall be hereafter established, otherwise than under the provisions of the act to which

23. Act May 11, 1901, Sec. 4, P. L. 169.

24. Act March 30, 1897, Sec. 1, P. L. 10.

Note.—This act is a supplement to the Act June 28, 1895, P. L. 411.
Supra Sec. 501.

25. Act March 30, 1897, Sec. 2, P. L. 10.

this is a supplement, a free, non-sectarian, public school library, the school directors, boards or organizations having control of the common schools of said districts, may, instead of establishing another public library and providing for its maintenance, join in extending aid to such library, already established, guaranteeing such aid, in such proportion, and on such terms as to control and management, as shall be agreed upon between the managers thereof and the school authorities of said respective districts; and for that purpose may levy the taxes provided for in the act to which this is a supplement, in the manner therein provided.²⁶

Annual report. Audit of account.

516. The managers of any public library receiving aid under the provisions of this act, shall annually report to to the school boards furnishing such aid, an account of the money so received, under the oath of the managers, or of their secretary and treasurer, and such account shall be subject to the jurisdiction of the auditors by whom the accounts of their respective school boards are audited, in like manner as their own accounts.²⁷

Borough councils may aid free public libraries.

517. For the purpose of establishing and maintaining free public libraries on a permanent basis throughout the Commonwealth, authority is hereby given to the town councils of the boroughs of this state to make appropriation or appropriations for or in aid of the establishment or maintenance, or either, of a free public library or libraries now incorporated, or that may hereafter be incorporated, for the use of the residents within any of the said boroughs, upon condition that the municipal authorities shall be represented to the satisfaction of said councils in the management of such library or libraries.²⁸

26. Act April 2, 1903, Sec. 2, P. L. 133.

Note.—This act is a supplement to the Act of June 28, 1895, P. L.

411. *Supra* Sec. 501.

27. Act April 2, 1903, Sec. 3, P. L. 133.

28. Act May 25, 1897, Sec. 1, P. L. 84.

Appropriation, limit.

518. The councils may appropriate annually from the taxes levied and collected for borough purposes for the establishment and maintenance of such library or libraries, not to exceed one mill on a dollar on all taxable property in such boroughs.²⁹

Library trustees, powers and duties. Election and term of members. Vacancy.

519. The public library of each district shall be under the general management of nine trustees acting as the agents and appointees of the school board who shall approve all plans for its storage and accommodation, purchase and take charge of all books, maps, documents, relics and literary, historical or other contributions, appoint all employees and make all regulations, and do all things necessary to its government, preservation and maintenance, subject to the approval of the board. The president and treasurer of the board and the superintendent of the district (or if there is no such officer, the secretary of the board), shall be ex-officio members of the board of trustees. The other six members shall be elected by the school board, two each for one, two and three years, and annually thereafter two members shall be chosen by said board for the term of three years. Each trustee shall serve until his successor is elected and in case of a vacancy it shall be filled by the school board for the unexpired term. The trustees shall make a report to the school board once each year or oftener if called upon of such subjects and in such manner as may be required by said board.³⁰

When election of trustees may be dispensed with.

520. Any board of school directors of any township or borough, or any other organization having control of the common schools of any township or borough, may, when decided upon by resolution duly passed by a majority of the members of said board of school directors or other organi-

29. Act May 25, 1897, Sec. 2, P. L. 84.

30. Act May 11, 1901, Sec. 1, P. L. 180. This act amends Sec. 4, Act June 28, 1895, P. L. 411.

zation having control of the common schools, as aforesaid, prior to the establishment of any library authorized by this act, dispense with the election of trustees, as hereinbefore provided; in which case the powers given, and duties imposed by said act to said trustees shall be assumed and exercised, by said school directors and other organization having control of the common schools of said township or borough.³¹

Supervision of libraries.

521. All public libraries established as above shall be under the general supervision and subject to the inspection of the State Librarian, who is hereby empowered to require reports thereof to be made by the trustees at such time and in such manner as he may see proper.³²

Adjoining school districts may join in establishing and maintaining free public libraries, or join in aiding those otherwise established.

522. When any township surrounds or immediately adjoins any borough within this Commonwealth, the school directors, boards, or organizations having control of the common schools of said borough and township, may join in the establishment and maintenance of a free, non-sectarian, public library in said borough or township, or partly in both, the expense of such establishment and maintenance to be borne by said borough and township, in such proportions as may be agreed upon by the school authorities of said respective school districts, and for that purpose may levy the taxes provided for in the act to which this is a supplement.³³

31. Act May 11, 1901, Sec. 1, P. L. 180. This act amends Sec. 4, Act June 28, 1895, P. L. 411.

32. Act June 28, 1895, Sec. 5, P. L. 411.

33. Act April 2, 1903, Sec. 1, P. L. 133.

Note.—This act is a supplement to the act of June 28, 1895, P. L. 411. *Supra*. Sec. 501, 503.

CHAPTER XX.

SCHOOL TERM.

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School term.

523. The minimum school term shall be seven months, and after the close of the school year ending on the first Monday of June, one thousand eight hundred and ninety-nine, school directors or controllers shall keep the schools of their respective districts in operation at least seven months each year: Provided, That the length of the annual term may remain as at present in districts where the maximum amount of tax allowed by law to be levied for school purposes, together with the amount of state appropriation to which the said districts are entitled, shall be found insufficient to keep the schools open a greater length of time than six months.¹

Days for improvement of teachers.

524. Two Saturdays in each month, as the proper board shall designate, which two Saturdays shall be held to be a part of the school month, may at the discretion, and by an affirmative vote of a majority of all the members of the board of directors or controllers, be appropriated to institutes for the improvement of the teachers of the said district: Provided, That in districts, in which the schools are or shall be, kept open, and in operation the maximum term now allowed by law, and the teachers employed by the year, the foregoing clause as to the number of days in the school month shall not apply any further, than that the reports and statistics of the school shall be kept in accordance therewith, and that district institutes may be held as there-by directed.²

1. Act April 4, 1899, Sec. 1, P. L. 31.

2. Act April 17, 1865, Sec. 1, P. L. 60.

President of board to certify the whole number of months the schools have been kept open and in operation.

525. As soon as the schools of any district shall have closed for the school year, commencing on the first Monday in June preceding, the president of the board of directors or controllers shall certify, under oath or affirmation, as to the whole number of months the schools in their respective districts have been kept open and in operation, according to law; also, that no teacher has been employed for or had charge of any of the schools of said district, during the year, who had not a valid certificate from the county superintendent, together with the name and post-office address of the district treasurer, and shall forward the same to the county superintendent, who shall immediately approve said certificate, if found to be correct, and transmit it to the state superintendent of common schools; if it shall appear by said certificate, that the schools of the district have been kept open and in operation, according to law, at least four months subsequent to the first Monday in June preceding, and that no teacher has had charge of any of the schools of the district, during the whole time they have been kept open during the year, who had not a valid certificate from the county superintendent, the state superintendent shall draw his warrant upon the state treasurer, for the whole amount which such district is entitled to receive from the annual state appropriation: Provided, That the board of directors or controllers shall, at the same time, forward to the county superintendent a report of the condition of the schools in their respective districts, as directed in the 23d section of the act of May 8th, 1854: And provided further, That said certificate and report shall have been transmitted to the superintendent of common schools, on or before the 15th day of July of the school year succeeding the one for which the certificate and report were made ³

School month.

526. A common school month shall hereafter consist of twenty days actual teaching, and, no school shall be kept

3. Act April 17, 1865, Sec. 3, P. L. 62.

open, in any district, for the purpose of ordinary instruction, on any Saturday, or on any legal holiday, or in any county, during the time of holding the annual county institute therein.⁴

Legal holidays.

527. The following days are named as legal holidays, to wit: The first day of January, commonly called New Year's day; the twelfth day of February, known as Lincoln's birthday; the third Tuesday of February, election day; the twenty-second day of February, known as Washington's birthday; Good Friday; the thirtieth day of May, known as Memorial day; the Fourth of July, called Independence day; the first Monday of September, known as Labor day; the first Tuesday after the first Monday of November, Election day; and the twenty-fifth day of December, known as Christmas Day.⁵

Teaching on legal holidays forbidden.

5 8. Mestrezat, J., said: "This was an action brought by the plaintiff against the defendant on April 9, 1894, before a justice of the peace, to recover for services rendered as a school teacher.

"The claim before the justice was \$105 for teaching one of the schools of Henry Clay township for 60 days, beginning November 27, 1893, and ending March 17, 1894, at \$35 per month. Before this suit was brought, the defendant tendered to the plaintiff the amount of his claim, less \$5.25 claimed by the plaintiff for teaching on New Year's Day, Washington's Birthday and Good Friday. On the trial of the cause in court, the defendant paid, and the plaintiff accepted, the amount of money tendered him. The defendant contends that the plaintiff is not entitled to recover for teaching on the three days named because they are legal holidays, and that, by the Act of June 25, 1885, P. L. 176, teaching on those days is prohibited. On the other hand, the plaintiff claims that the fourth section of

4. Act June 25, 1885, Sec. 1, P. L. 176.

5. Act June 23, 1897, Sec. 1, P. L. 188, amending Act May 31, 1893, P. L. 188.

the Act of May 31, 1893, P. L. 188, repeals the Act of 1885, and that therefore there is no prohibition against teaching on a legal holiday.

"After the plaintiff had closed his testimony, we granted a non-suit, on the ground that the Act of 1885 was still in force, and that therefore the plaintiff could not recover for the services he rendered in teaching on the legal holidays named.

"Notwithstanding the very able and ingenious argument of plaintiff's counsel, we are not convinced that the Act of 1893 repealed the Act of 1885. On the other hand, for the reasons stated at the time the non-suit was granted, we have no doubt that the Act of 1885 is still in force.

"The plaintiff therefore is not entitled to recover for teaching on New Year's Day, Washington's Birthday and Good Friday, they being legal holidays."⁶

6. Thomas vs. School District of Henry Clay Township, 6 D. R. 230, 1895.

CHAPTER XXI.

COMPULSORY ATTENDANCE.

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Duty of parents, guardians, etc. Attendance. When school-boards may excuse.

529. Every parent, guardian or other person in this Commonwealth, having control or charge of a child or children between the ages of eight and sixteen years, shall be required to send such child or children to a day school in which the common English branches are taught, and such child or children shall attend such school continuously during the entire time in which the public school in their respective districts shall be in session, unless such child or children shall be excused from such attendance by the board of the school district in which the parent, guardian or other person resides, upon the presentation to said board of satisfactory evidence showing such child or children are prevented from attendance upon school or application to study by mental, physical or other urgent reasons. But the term "urgent reasons" shall be strictly construed, and shall not permit of irregular attendance: Provided, That the school-board in each district shall have power, at its June meeting, to reduce the period of compulsory attendance to not less

than seventy per centum (70 per centum) of the school term in such district, in which case the board must, at that date, fix the time for the compulsory attendance.¹

Application of the act.

530. This act shall not apply to any child, between the ages of thirteen and sixteen years, who can read and write the English language intelligently, and is regularly engaged in any useful employment or service. A certificate of age and ability to read and write the English language intelligently shall be issued by the superintendent of schools, notary public, justice of the peace, or any other person duly authorized to administer oaths, in cities and boroughs, and by the secretary of the school-board in rural districts: Provided, That in case there be no public school in session within two miles, by the nearest traveled road, of any person within the school district, he or she shall not be liable to the provisions of this act.²

To what children act shall apply.

531. This act shall not apply to any child that has been or is being otherwise instructed in English, in the common branches of learning, for a like period of time, by any legally qualified governess or private teacher in a family: And provided further, That any teacher or principal of any private school or educational institution shall report non-attendance, as provided in section five (5) of this act.³

Report of employers.

532. Any person employing a child or children shall furnish, on or before the third Monday of the school term, and quarterly thereafter, to the superintendent of schools, to the secretary of the board of school directors, or controllers, of the district in which such child or children reside, the names, age, place of residence, and name of parent or guardian of every person under the age of sixteen years in his employ at the time of said report: And provided also,

1. Act July 11, 1901, Sec. 1, P. L. 658.

2. Act July 11, 1901, Sec. 1, P. L. 658, as amended by act April 10, 1905, P. L. 131.

3. Act July 11, 1901, Sec. 1, P. L. 658.

That the certificate of any principal or teacher of a private school, or of any institution for the education of children, in which the common English branches are taught, setting forth that the work of said school is in compliance with the provisions of this act, shall be sufficient evidence thereof, and the teacher or principal of said school or institution shall have the power to excuse any child or children for non-attendance during temporary periods, in accordance with the provisions of this act.⁴

Neglect of duty a misdemeanor.

533. For every neglect of duty imposed by the first section of this act, the principal or teacher, or person in parental relation, offending, shall be guilty of a misdemeanor, and shall upon conviction thereof before a justice of the peace, magistrate or alderman, forfeit a fine not exceeding two dollars on first conviction, and a fine not exceeding five dollars for each subsequent conviction; and in default of payment of said fine, the defendant may be committed to the county prison for a period not exceeding two days for the first conviction, and for a period not exceeding five days for each subsequent conviction: Provided, Upon conviction, the defendant or defendants may appeal to the court of quarter sessions of the peace of the proper county, within five days, upon entering into recognizance with one surety for the amount of fines and costs.⁵

Notice to parent.

534. Before such penalty shall be incurred, the parent, guardian or other person liable therefore shall be notified in writing by the superintendent of schools, or the secretary of the school board, or by the attendance officer, if there be one, of such liability, and shall have opportunity, by compliance with the requirements of this act, within three school days, then and thereafter, to avoid the imposition of such penalty. But after such notice has been served, if the same child is absent from school three days, or their equivalent in time, during the remaining period of compulsory attend-

4. Act July 11, 1901, Sec. 1, P. L. 658.

5. Act July 11, 1901, Sec. 2, P. L. 658.

ance, without excuse as provided by section one (1) of this act, the parent, guardian, or person in parental relation, shall be liable to prosecution under this act, without further notice.⁶

Disposition of fines.

535. The fines provided for by this act shall, when collected, be paid over by the officers collecting the same into the school treasury of the respective districts, for the use of the said school district of the city, borough or township in which such person convicted resides, to be applied and accounted for by such treasurers in the same way as other moneys raised for school purposes; such fines shall be collected by a process of law similar to the collection of other fines.⁷

Power of attendance officers.

536. Board of school directors or school controllers shall in cities, and may in all other school districts, employ one or more persons to be known as attendance officers, who shall, in addition to the duties provided elsewhere in this act, have full police power without warrant, and whose duty it shall be to look after and arrest and apprehend truants and others who fail to attend school in accordance with the provisions of this act.⁸

Disposition of truants.

537. When an attendance officer arrests or apprehends any truant or other person, as herein set forth, he shall have power, immediately to place him or her in the school in which he or she is or should be enrolled, or at the expense of the parent, guardian or person in parental relation, in such private school, as provided by section one (1) of this act, as the parent, guardian or person in parental relation may select. And in case the parent, guardian or person in parental relation shall refuse or neglect, immediately to select such school, the school board or board of school con-

6. Act July 11, 1901, Sec. 2, P. L. 658.

7. Act July 11, 1901, Sec. 2, P. L. 658.

8. Act July 11, 1901, Sec. 3, P. L. 658.

trollers shall have full power to designate the school in which the child shall be placed.⁹

Compensation of officers.

538. The persons appointed such attendance officers shall be entitled to such compensation as shall be fixed by the boards appointing them; but, in townships, shall not exceed two dollars per day; and such compensation may be paid out of the school fund.¹⁰

Boards may establish special schools.

539. Boards of directors or controllers of any school district, or of two or more districts jointly may establish special schools for children who are habitual truants, or who are insubordinate or disorderly during their attendance upon instruction in the public schools, and may provide for the proper care, maintenance and instruction of such children in such schools, for such period of time as the board may prescribe. But before the pupil shall be placed in such special school, the parent, guardian or person in parental relation shall have opportunity to be heard.¹¹

Proceedings against truants for disorderly conduct.

540. All truancy and incorrigibility shall be deemed disorderly conduct. And in case no special school, as herein prescribed, has been established, the superintendent of schools or secretary, or attendance officer if there be one, shall proceed against such truant or incorrigible pupil as a disorderly person, before a justice of the peace, magistrate or alderman, and upon conviction the pupil may be sentenced to any special or reformatory school supported wholly or in part by the state, or at the option of the school board or board of controllers, be committed to the care of a society, duly incorporated, having for one of its objects the protection of children from cruelty or the placing of children, not otherwise provided for, in families; and in case of a commitment of a child or children to the care of such society, the board of directors or controllers of the district may provide for

9. Act July 11, 1901, Sec. 3, P. L. 658.

10. Act July 11, 1901, Sec. 3, P. L. 658.

11. Act July 11, 1901, Sec. 3, P. L. 658.

the expense of the maintenance and education of such child or children out of that part of the school fund within its control which shall have been appropriated to said board by the local authorities of such district.¹²

Assessors to make list of children, etc.

541. It shall be the duty of the assessors of voters of every district, when not notified and directed to the contrary by the school board, at the spring registration of voters or as soon as possible thereafter, to make in a substantial book, provided by the superintendent of public institution at the expense of the state, for that purpose, a careful and correct list of all children between the ages of six and sixteen within his district, giving the full name, date of birth, age, sex, nationality, residence, sub-school district, name and address of parent or person in parental relation, and the name and location of the school where the child is enrolled, or the cause of non-enrollment, and the name and address of the employer of any child under sixteen years of age that is engaged in any regular employment or service ; which enumeration, after approval by the secretary of the said school district, shall be returned by the said assessor to the county commissioners of the county in which the enumeration is made, whose duty it shall be to forward the same, or a certified copy thereof, to the secretary of the proper school district, prior to July fifteenth of each year, who shall immediately furnish the principal or teacher of each school with a correct list of all children in his or her district who are subject to the provisions of this act ; and the said county commissioners shall furnish a summary of such statistics to the superintendent of public institution, upon blanks provided by the state. And the said assessors shall be paid, out of the county funds, a per diem compensation for their services, a sum equal to the compensation paid under existing laws for assessors of election ; said services not to exceed ten days : Provided, That prior to February first of any year, any board of directors or controllers of any school district may authorize such enumeration to be

12. Act July 11, 1901, Sec. 3, P. L. 658.

made by the attendance officers or other persons, at the expense of the school district, under the same conditions as herein provided for assessors : Provided further, That the attendance officers, if there be any, or the superintendent of schools, or the secretary of the school board, shall have the power to add to this register the names of children within the prescribed ages whose names do not appear thereon.¹³

Report of teacher. Notice. Costs of prosecution.

542 It shall be the duty of each teacher in the school district to report immediately to the attendance officer or the superintendent of schools, or the secretary of the board of directors or controllers, the names of all children, on the list previously furnished by said superintendent or secretary, who have been absent three days or their equivalent without lawful excuse ; when, if it shall appear that any parent, guardian or other person having control of any child or children shall have failed to comply with the provisions of this act, after notification in writing as provided in section two, the superintendent or secretary, or attendance officer if there be one, in the name of the school district, shall proceed against the offending party or parties, in accordance with the provisions of this act : Provided further, That if sufficient cause be shown for the neglect of the requirements of this act, or if the costs of prosecution cannot be collected from the defendant, said cost may be paid out of the district funds upon a proper voucher approved by the board of directors or controllers.¹⁴

Refusal or neglect of officers a misdemeanor.

543. The superintendent of schools or secretary, or attendance officer if there be one, of any board of directors or controllers who wilfully refuses or neglects to comply with the provisions of this act shall be guilty of a misdemeanor, and upon conviction thereof, before an alderman, magistrate or justice of the peace, shall forfeit a fine not exceeding twenty-five dollars.¹⁵

13. Act July 11, 1901, Sec. 4, P. L. 658.

14. Act July 11, 1901, Sec. 5, P. L. 658.

15. Act July 11, 1901, Sec. 6, P. L. 658.

Portion of appropriation may be withheld.

544. The state superintendent of public instruction may withhold one-fourth state appropriation from any school district which neglects or refuses to enforce the provisions of this act in a manner and degree satisfactory to the state superintendent of public instruction.¹⁶

Parents may employ governess or private teachers without certificate and not violate the provisions of the Act of July 11, 1901, known as the "Compulsory School Law."

545. Judge E. W. Biddle said: "On January 12, 1903, the secretary of the school board of West Pennsboro township made an information before a justice of the peace against Brady McCullogh, of said township, charging him with violation of the provisions of the act of July 11, 1901, P. L. 658, popularly known as the "Compulsory school law." The alleged offense was that the defendant refused to send his twelve-year-old daughter to a public school, without having had her excused from attendance by the board of directors. After a hearing the justice adjudged him to be guilty and imposed upon him a fine of \$2 and the costs. From this action of the justice the defendant appealed to the court of quarter sessions, wherein a trial was held, and by agreement of counsel a special verdict was rendered by the jury as follows:

"1. That the defendant removed his child from the public school because he believed that the treatment she received from the teacher was injurious to her mentally and physically, but that the child did not apply to the board of directors to excuse her from attendance and refused since to apply for the same.

"2. That since defendant removed his child from the public schools she has been instructed in English in the common branches of learning by a private teacher in his family, who is well qualified to give such instruction, but said private teacher had no certificate from the county superintendent of public schools, nor was her examination by McCrea and Martin authorized by the superintendent or board of directors, nor has she since applied for a certificate.

16. Act July 11, 1901, Sec. 7, P. L. 658.

"If, under these findings of facts, the court should be of opinion that under the law the defendant is guilty, then we find him guilty in manner and form in which he stands indicted; otherwise we find him not guilty, and county for costs."

"The law is settled in Pennsylvania that, in disposing of a special verdict, the court is confined to the specific facts which it contains and cannot supplement them by a resort either to the testimony or to any other outside source of information: *Tuigg vs. Treacy*, 104 Pa. 493; *Commonwealth vs Grimes*, 116 Pa, 450. Tested by this principle, it is evident that for various reasons the special verdict would not warrant the court in pronouncing the defendant guilty. It is deficient in that it does not set forth that the offense was committed in Cumberland County, or that it occurred within the period of two years before the bill of indictment was found, or that the defendant was notified of his liability before suit was brought, or that there was a public school in session within two miles of his home. In view of the foregoing the defendant is entitled to a verdict of not guilty.

"For the benefit of the various boards of school directors of the county, the counsel on both sides of the case have requested the court to give an opinion as to the meaning of the following important proviso, which appears in the said act of assembly: "Provided, That this act shall not apply to any child that has been or is being otherwise instructed in English in the common branches of learning, for a like period of time, by any legally qualified governess or private teacher in a family." The vital question is, can any one be "legally qualified" to teach in a family who is not the holder of a teacher's certificate from a county, city or borough superintendent, or a state normal school?

The word "governess" means "a woman who teaches children in their homes," and the succeeding words of the sentence "or private teacher in a family" have exactly the same signification, except that they apply alike to men and women. By the act of May 8, 1854, P. L. 617, it was specified that no teacher shall be employed in any school to

teach branches other than those set forth in his certificate ; and the subsequent acts of April 9, 1867, P. L. 51, and May 21, 1901, P. L. 269, take a further step in the right direction by specifying certain mental and moral qualifications which a teacher must possess in order to obtain a certificate of any kind. The act of May 8, 1854, is entitled "An act for the regulation and continuance of a system of education by common schools ;" the act of April 9, 1867, is a supplement to the same, and the act of May 21, 1901, is an amendment of the supplement. Their provisions concerning teachers relate exclusively to those connected with, or who desire to become connected with, the common schools, and have no reference whatever to other teachers.

"The act of July 12, 1897, P. L. 248, amending the original compulsory educational law of May 16, 1895, P. L. 72, provided as follows : "That this act shall not apply to any child that has been or is being otherwise instructed in English in the common branches of learning for a like period of time." Such was substantially the language used in the former act, and it is argued on the behalf of the Commonwealth that the incorporation of this language into the act of July 11, 1901, with the addition thereto of the words "by any legally qualified governess or teacher in a private family," has made an essential change in the law, and that to be "legally qualified" involves the holding of a teacher's certificate.

"After mature reflection we cannot agree with this view, because there is no statute which fixes the qualifications of a private teacher. The act of July 11, 1901, is penal in its character and must, therefore, be construed strictly. In regard to this subject, Judge Endlich says in section 330 of his Commentary on the Interpretation of Statutes : "It maybe here added that the rule of strict construction in the case of penal statutes requires that where an act contains such an ambiguity as to leave reasonable doubt of its meaning, it is the duty of the court not to inflict the penalty ; that where it admits of two constructions, that which operates in favor of life or liberty is to be preferred." Again in section 340 : "It is presumed that the legislature does

not desire to confiscate the property, or to encroach upon the rights of persons, and it is therefore expected that if such be its intention, it will manifest it plainly, if not in express words, at least by clear implication and beyond reasonable doubt."

"Our conclusion is that if the legislative body had designed the act of July 11, 1901, to seriously affect the legal status and rights of private teachers who do not hold certificates, and also to brand as a criminal the person who should employ one of their number to give home instruction to a child which might otherwise be sent to school, it would have plainly said so. In the absence of words which either expressly or by clear implication show an intent of that kind, we decide that "legally" as used in the proviso has no technical import, and, if considered at all, should be interpreted to mean "well" or "suitably." The doctrine is established that every word and phrase shall be given due effect, if practicable, yet if a sensible meaning cannot be attached to a particular word or phrase, it must be eliminated in the construction. From the above it logically follows, under the facts set forth in the special verdict, that the child of the defendant received lawful and proper instruction at home, and that the defendant did not commit a breach of the law by having her instructed there by a "well-qualified" teacher, notwithstanding such teacher did not hold a certificate." ¹⁷

District Assessor.

546. The County Commissioners must pay the district assessor out of the county funds for making the enumeration of school children under the provisions of the compulsory school law. ¹⁸

17. *Commonwealth vs. McCullogh*, 12 D. R. 258, 1903.

18. *Assessors' Compensation*, 17 Pa., C. C. 572, 1896.

CHAPTER XXII.

POWER OF THE COURTS OF QUARTER SESSIONS OVER CHILDREN UNDER SIXTEEN YEARS OF AGE.

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Preamble of act, defining the powers of courts of quarter sessions, with reference to care and control of certain children under age of sixteen years.

547. Whereas, The welfare of the state demands that children should be guarded from association and contact with crime and criminals, and the ordinary process of the criminal law does not provide such treatment and care and moral encouragement as are essential to all children in the formative period of life, but endangers the whole future of the child ;

And Whereas, Experience has shown that children, lacking proper parental care or guardianship, are led into courses of life which may render them liable to the pains and penalties of the criminal law of the state, although in fact the real interests of such child or children require that they be not incarcerated in penitentiaries and jails, as members of the criminal class, but be subjected to a wise care, treat-

ment and control, that their evil tendencies may be checked and their better instincts may be strengthened ;

And Whereas, To that end, it is important that the powers of the courts, in respect to the care, treatment and control over dependent, neglected, delinquent and incorrigible children, should be clearly distinguished from the powers exercised in the administration of the criminal law :

Jurisdiction of courts of quarter sessions.

548. The courts of quarter sessions of the peace, within the several counties of this Commonwealth, shall have and possess full jurisdiction in all proceedings which may be brought before them affecting the treatment and control of dependent, neglected, incorrigible and delinquent children, under the age of sixteen years.¹

“ Dependent child,” “ neglected child,” “ incorrigible child ” and “ delinquent child ” defined.

549. For the purpose of this act the words “ dependent child ” and “ neglected child ” shall mean any child who is destitute, homeless, abandoned, or dependent upon the public for support, or who has not proper parental care or guardianship. The words “ incorrigible children ” shall mean any child who is charged by its parent or guardian with being unmanageable. The words “ delinquent child ” shall mean any child, including such as have heretofore been designated “ incorrigible children,” who may be charged with the violation of any law of this Commonwealth, or the ordinance of any city, borough or township.²

Assignment of judge. Juvenile court. Sessions. Records.

550. The powers of the court of quarter sessions of the peace, as provided for in this act, may be exercised by any one or more judges of such court, who may be assigned for the purpose at a session of said court, which shall be known as the juvenile court ; and all sessions of such juvenile court shall be held separate and apart from any session of the court held for the purpose of its general criminal or other

1. Act April 23, 1903, Sec. 1, P. L. 274.

2. Act April 23, 1903, Sec. 1, P. L. 274.

business, and the records of the proceedings of such juvenile court shall be kept in a docket, separate from all other proceedings of said court.³

Powers of the court may be exercised. Petition of citizen.

551. The powers of the court may be exercised :

(1.) Upon the petition of any citizen, resident of the county, setting forth that a child is neglected, dependent or delinquent, and is in need of the care and protection of the court.

Certificate of magistrate or justice of the peace.

552. (2.) Whenever any magistrate or justice of the peace, in committing a child, arrested for an indictable offense, shall certify that, in his opinion, the good of the child and the interests of the state do not require a prosecution upon an indictment, under the criminal laws of the Commonwealth.

Certificate of the district attorney.

553 (3) Whenever, after return made by a magistrate of the proceedings, upon the arrest of such delinquent child for an indictable offense, the district attorney of the county, either before or after the indictment, shall certify that, in his opinion, the good of the child and the interest of the state do not require a prosecution upon an indictment, under the criminal laws of this Commonwealth.

Action of the judge.

554. (4) Whenever, upon the trial of any indictment of such delinquent child, the judge trying the cause is of opinion that the good of the child and the interests of the state do not require a conviction under the criminal laws of this Commonwealth.⁴

Power of the judge. Custody and control of the child.

555. Upon the filing of any petition, as above set forth, or whenever the jurisdiction of the court has attached by the filing of a certificate of a magistrate or justice of the peace, or of the district attorney, or by the action of a judge, as above

3. Act April 23, 1903, Sec. 1, P. L. 274.

4. Act April 23, 1903, Sec. 2, P. L. 274.

set forth, it shall be within the power of the judge, holding said juvenile court, to make all necessary orders for compelling the production of such child, and the attendance of the parents and all persons having the custody or control of the child, or with whom the child may be ; and pending the final disposition of any case, the child shall be subject to the order of the court, and may be permitted to remain in the control of its parents or the person having it in charge, or of the probation officer, or may be kept in some place provided by the state or county authorities, or by any association having for one of its objects the care of delinquent or neglected children, as the court may order.⁵

Appointment of probation officers. Duties of.

556. The court shall appoint or designate one or more discreet persons, of good character, to serve as probation officers during the pleasure of the court ; said probation officers to receive no compensation from the public treasury ; and it shall be the duty of all probation officers, so appointed, to make such investigations as may be required by the court, to be present in court when the case is heard, and to furnish to the court such information and assistance as the judge may require, and to take such charge of any child, before and after trial, as may be directed by the court.⁶

Commitment of child. Order on parents or guardians.

557. At the hearing, the judge or judges holding such session of the court, shall determine, after an inquiry into the facts, what order for the commitment and custody and care of the child, the child's own good and the best interests of the state may require ; and may commit such child to the care of its parents, subject to the supervision of a probation officer, or to some suitable institution, or the care of some reputable citizen of good moral character, or to the care of some training school, or to an industrial school, or the care of some association willing to receive it ; and in either such case it shall be within the power of the court to make an order upon the parent or parents of any such

5. Act April 23, 1903, Sec. 2, P. L. 274.

6. Act April 23, 1903, Sec. 3, P. L. 274.

child to contribute to the support of the child, such sum as the court may determine.⁷

Proviso. Discharge from reformatory institution. Record.

558. It being further provided that, in all cases in which a delinquent child shall be committed to the care of a reformatory institution, when such child shall be discharged from such institution, the court shall be duly advised thereof, and a record of such discharge shall be kept in the juvenile court docket.⁸

Guardianship. Legal adoption. Guardianship not to include estate.

559. In any case where the court shall award a dependent child to the care of any association or individual, in accordance with the provisions of this act, the child shall, unless otherwise ordered, become a ward, and be subject to the guardianship of the association or individual to whose care it is committed. Such association or individual shall have authority to place such child in a family home, with or without indenture, and may be made party to any proceedings for the legal adoption of the child, and may, by its or his attorney or agent, appear in any court where such proceedings are pending and assent to such adoption. And such assent shall be sufficient to authorize the court to enter the proper order or decree of adoption. Such guardianship shall not include the guardianship of any estate of the child.⁹

Care of the child.

560. In the case of a delinquent child, the court may continue the hearing from time to time; and may commit the child to the care and guardianship of a probation officer, duly appointed by the court, and may allow said child to remain in its own home, subject to the visitation of the probation officer, such child to report to the probation officer as often as may be required, and subject to be returned to the court, for further proceedings, whenever such action may appear to be necessary; or the court may commit the child to the care and guardianship of the probation officer,

7. Act April 23, 1903, Sec. 4, P. L. 274.

8. Act April 23, 1903, Sec. 4, P. L. 274.

9. Act April 23, 1903, Sec. 5, P. L. 274.

to be placed in a suitable family home, subject to the supervision of such probation officer; or it may authorize the said probation officer to board out the said child in some suitable family home, in case provision is made by voluntary contribution or otherwise for the payment of the board of such child, until a suitable provision may be made for the child in a home without such payment; or the court may commit the child to a suitable institution for the care of delinquent children, or to any society, duly incorporated, having for one of its objects the protection of dependent or delinquent children.¹⁰

Unlawful to confine child in jail, police station, etc.

561. No child, pending a hearing under the provisions of this act, shall be held in confinement in any county or other jail, police station, or in any institution to which adult convicts are sentenced.¹¹

Limit of commitment.

562. No order for the commitment of any child, in any proceedings had under this act, shall extend to a period beyond when such child shall attain the age of twenty-one years.¹²

Religious belief.

563. The court, in making all orders for the commitment of children, shall place them, as far as possible, in care and custody of persons having the same religious belief as the parents of the child, or with some association which is controlled by persons of such religious belief; and shall, as far as possible, provide, in making orders of commitment, that the care, custody and discipline of the child shall be as nearly as possible that which should be given by its parents.¹³

Approved family home.

564. In all cases where it can properly be done, the child shall be placed in an approved family home, and become a member of the family by legal adoption or otherwise.¹⁴

10. Act April 23, 1903, Sec. 6, P. L. 274.

11. Act April 23, 1903, Sec. 7, P. L. 274.

12. Act April 23, 1903, Sec. 8, P. L. 274.

13. Act April 23, 1903, Sec. 9, P. L. 274.

14. Act April 23, 1903, Sec. 9, P. L. 274.

Commitment of delinquent child under the age of twelve years.

565. It shall not be lawful to commit the custody of any delinquent child, under the age of twelve years, to any institution of correction or reformation, unless, after the care and oversight given such child under the probation system provided for by this act, the court finds that the best interests of the child and the welfare of the community require such commitment; and it shall not be lawful to commit the custody of any neglected or dependent child, who is delinquent, to any institution of correction or reformation in which delinquent children are received, nor shall any delinquent child be committed to any institution in which dependent or neglected children are received.¹⁵

Trials upon indictment.

566. Nothing herein contained shall be in derogation of the powers of the courts of quarter sessions and oyer and terminer to try, upon an indictment, any delinquent child who, in due course, may be brought to trial.¹⁶

15. Act April 23, 1903, Seo. 10, P. L. 274.

16. Act April 23, 1903, Sec. 11, P. L. 274.

CHAPTER XXIII.

TEACHERS.

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Qualifications.

567. No teacher in this Commonwealth shall receive from a county, city or borough superintendent, a certificate as a teacher who has not a fair knowledge of orthography, reading, writing, geography, English grammar, mental and written arithmetic, history of the United States, the theory of teaching, and civil government, including state and local, and elementary algebra; nor shall such certificate be given to any person who is in the habit of using, as a beverage, any intoxicating drinks, or habitually takes opium; and all certificates given to teachers shall set forth the branches in which those holding them have been found proficient, and indicate by suitable marks the degree of that proficiency.¹

Teachers to be examined in physiology and hygiene.

568. No certificate shall be granted any person to teach in the public schools of the Commonwealth or in any of the educational institutions receiving money from the Commonwealth, who has not passed a satisfactory examination in physiology and hygiene, with special reference to the effects of alcoholic drinks, stimulants, and narcotics upon the human system.²

Examination in physical culture.

569. In cities of the first and second class, teachers must be examined in physical culture.³

Humane education.

570. A system of humane education has been established in our public schools and while the act does not declare that teachers shall be examined, yet every teacher should inform himself on the subject.⁴

1. Act May 21, 1901, P. L. 269, amending Act April 9, 1867, Sec. 11, P. L., 55.

2. Act April 2, 1885, Sec. 3, P. L., 7.

3. Act March 8, 1901, Sec. 2, P. L. 49.

4. Act March 27, 1905, P. L. 60.

Provisional certificate. To whom granted.

571. County, city or borough superintendents shall issue two grades of teachers' certificates, one of which shall be called a provisional certificate, and shall be given to applicants possessing a fair knowledge of the following branches, to wit: Orthography, reading, writing, geography, English grammar, mental and written arithmetic, history of the United States, the theory of teaching⁵, physiology, and hygiene, with special reference to the effects of alcoholic drinks, stimulants and narcotics upon the human system⁶, civil government, including state and local, and elementary algebra,⁷ or to those who, possessing a thorough knowledge of the branches, have little or no experience in teaching, and shall license the holder to teach in the county, city or borough where issued, for one year, and which shall not be renewed without a re-examination.⁸

Professional certificate. To whom granted.

572. The act also provides that the other (certificate) shall be called a professional certificate, and shall be given only to those who possess a thorough knowledge of the same branches (as required for the provisional certificate), and who have had successful experience in teaching, and shall license the holder to teach in the county, city or borough, where issued, during the official term of the county, city or borough superintendent issuing it, and for one year thereafter.⁹

Renewal.

573. Any professional certificate may be renewed by a county, city or borough superintendent without re-examination, after having fully satisfied himself, by personal observation, in his or her school, of the competency and skill, as a teacher, of the person holding it.¹⁰

5. Act April 9, 1867, Sec. 11, P. L. 55.

6. Act April 2, 1885, Sec. 3, P. L. 7.

7. Act May 21, 1901, P. L. 269;

8. Act April 9, 1867, Sec. 12, P. L. 55.

9. Act April 9, 1867, Sec 12, P. L. 55.

10. Act April 9, 1867, Sec. 12, P. L. 55.

Permanent certificate. To whom granted. Authority to annul.

574. The superintendent of public instruction shall cause to be prepared a new grade of teacher's certificate, to be called a permanent certificate, which shall be granted by him to practical teachers holding professional certificates upon the recommendation of the board or boards of directors in whose employment the applicant shall have taught for the three preceding annual school terms, which shall be countersigned by the proper county, city or borough superintendent in office when the application shall be made, and approved, after examination, by a committee for each county or city in case a separate teachers' annual institute is held therein, which committee shall consist of three practical teachers holding a valid teachers' certificate, who shall be appointed and commissioned as examiners for a term of three years by the superintendent of public instruction, and who shall be subject to removal by him at any time, and such permanent certificate shall continue to be valid in such county, city or borough unless forfeited according to the provisions of this act, and shall also entitle the holder to teach one year in any other county, city or borough in this Commonwealth, without re-examination, at the end of which time it may be indorsed by the proper county, city or borough superintendent, if, from personal knowledge, he deem it worthily held, and it shall then confer upon the holder the same rank and privileges as in the county, city or borough where issued, and such permanent certificate shall only be annulled upon complaint, duly proven of incompetency, cruelty, negligence or immorality made to the state superintendent of common schools by a county, city or borough superintendent and a committee of teachers elected and constituted as aforesaid.¹¹

Examination for permanent certificate.

575. All examinations for permanent certificates for teachers in the common schools, shall be by written questions and answers; and in case the examination of the appli-

11. Act June 28, 1895, Sec. 9, P. L. 417, amending Act April 9, 1867, Sec. 12, P. L. 55.

cant is satisfactory to the committee of teachers on permanent certificates, the list of questions and answers, with all other papers accompanying the application, shall be forwarded to the department of public instruction, and if approved by the superintendent of public instruction, he shall issue and forward to the applicant a permanent certificate, in accordance with the recommendation made by the committee, as now required by law; Provided, That the questions shall be answered immediately and in the presence of the committee.¹²

Permanent certificates issued on recommendation of committee elected by county institute. Exceptions.

576. Any permanent certificate granted or hereafter issued on the recommendation of a committee of teachers, duly elected at the annual session of the county institute, shall be a valid certificate, and shall continue to be valid in all the districts of the county where issued, including the several cities and boroughs within the county, except such cities and boroughs as may be authorized by law to hold separate annual teachers' institutes, and empowered to recommend the granting of permanent certificates, which certificates shall be valid only in the city or borough where issued.¹³

Election of certain grades of teachers for two or three years. Dismissal.

577. Local school boards of the various townships, boroughs and wards, and boards of education, boards of control and other bodies having authority, under the laws of this Commonwealth, to elect principals and assistant teachers of public high and state normal schools of said Commonwealth, may elect principals and assistant teachers, holding the grade of "professional certificates," for two successive school terms, and those holding the grade of "permanent certificates," or diplomas, issued by state normal schools of this Commonwealth, for three successive school terms: Provided, That any of the aforesaid boards shall have power, at any time, to dismiss any principal or assistant teacher in

12. Act June 22, 1883, Sec. 1, P. L. 156.

13. Act June 22, 1883, Sec. 2, P. L. 156.

their employ for any of the causes mentioned in the act of May 8, one thousand eight hundred and fifty-four, of the school laws of this Commonwealth.¹⁴

School board of a township may employ teachers for the term of three years under act of June 25, 1885.

578. In accordance with this action of the school board, the president and secretary entered into a written contract with the plaintiff, employing her to teach in the schools of the district for a period of three successive school terms at a salary of \$45 per month. It was admitted upon the trial that the plaintiff has a diploma from the state normal school. Under the contract above mentioned, the plaintiff taught one of the schools of the defendant district for two successive years, and was prevented from teaching the third year by the election of another teacher, who was placed in charge of the school formerly taught by the plaintiff and who refused her permission to teach therein, although offering to do so for a number of successive days at the opening of the school term.

The present action is brought to recover the amount of the plaintiff's salary or wages as a teacher for ten months from August to May. A recovery was had in the court below for the full amount. On appeal the Superior Court affirmed the judgment of the lower court.

The defendant school district seeks to evade payment on the ground that contract with the plaintiff is invalid because the school board had no authority to enter into such a contract for three years.

The contract entered into by the president and secretary, in accordance with the power granted to them by the board in the resolution, as recorded in the minutes, was a sufficient contract upon which to base a recovery, if the board had authority to employ the plaintiff for the period of three terms, and this involves the construction of the act of June 25, 1885, P. L. 175, in which it is provided:

"That, on and after the passage of this act, local school boards of the various townships, boroughs and wards, and

14. Act June 25, 1885, Sec. 1, P. L. 175.
Act May 8, 1854. *Infra* Sec. 586.

boards of education, boards of control and other bodies having authority, under the laws of this Commonwealth, to elect principals and assistant teachers of public high and state normal schools of said Commonwealth, may elect principals and assistant teachers holding the grade of professional certificates for two successive school terms, and those holding the grade of permanent certificates or diplomas issued by state normal schools of this Commonwealth for three successive school terms."

It is claimed by the appellant that this does not relate to the election of teachers of ordinary public schools, inasmuch as there is no comma between public and high. At the time the said act was passed, however, there was no authority to establish high schools within the townships of the Commonwealth, that power having been conferred by the act of June 28, 1895 P. L. 413. The power to make the contracts for three years was based substantially upon the qualifications of the teacher, and, if qualified to teach in a high or normal school and authority was given to make a contract for three years under such circumstances, it is difficult to see why the school directors of a township should not have the power to elect for a similar period for schools of a lower grade. In the publication of the school laws by the school department, it is proper to say that a comma appears after the word "public" without determining whether or not we have the power to read a comma into the act, it is, nevertheless, apparent that it applies to schools below the grade of a high school which were then in existence in the several townships of the state. If the word "public" simply qualifies the word "high," it would have been simply conferring a power upon the school directors of the townships to elect teachers for schools which had no existence and no legal authority for existence at the time the act was passed.

The contract, under which the plaintiff claims, having been, therefore, authorized by law and voted by the school directors substantially in compliance with the terms of law, and the plaintiff being admittedly qualified, we are of opinion that the contract of employment bound the township for the full term stipulated therein and that, having been

deprived of the right to teach, in accordance with the terms of her employment, and having been unable as she testifies, to secure employment elsewhere, she had the right to recover in this action.¹⁵

Permanent state teachers' certificates. To whom granted.

579. The state superintendent of public instruction be empowered to and shall grant, without examination, permanent state teachers' certificates to all applicants therefor, who are graduates of recognized literary or scientific colleges legally empowered to confer the degrees of Bachelor of Arts (B. A.), Master of Arts (M. A.), Bachelor of Science (B. S.), Master of Science (M. S.) and Bachelor of Philosophy (Ph. B.), and whose course of study embraces not less than four collegiate years: Provided, Said applicants are at least twenty-one years of age and have taught at least three full annual terms in the public schools of the Commonwealth: Provided further, That each applicant shall produce to the said state superintendent of public instruction a certificate from the school board or boards, countersigned by the county superintendent of the same county where he or she last taught, showing that the said applicant is a person of good moral character; has been successful as a teacher in the public schools during said term: And provided further, That said certificate shall be granted by the state superintendent of public instruction, after having received satisfactory evidence from the said applicants that they have complied with the requirements of this act.¹⁶

Forms of applications. Power of superintendent of public instruction to annul permanent state teachers' certificates.

580. The forms of application shall be submitted by applicants, and the certificates to be issued in accordance with the provisions of this act shall be prescribed and determined by the superintendent of public instruction, and he shall have authority to annul such certificates granted by himself or his predecessors in office, upon complaint duly

15. *Burke vs. School District*, 28 Pa. Superior Ct., 16, 1905.

16. Act May 10, 1893, Sec. 1, P. L. 39.

proven, of incompetency, cruelty, negligence or immorality on the part of the holder thereof.¹⁷

Granting of permanent state teachers' certificates to college graduates.

581. Attorney-General Hensel said: "I beg to acknowledge your oral request for a construction of and for advice upon the act of May 10, 1893, relative to the grant of permanent certificates to graduates of certain literary institutions "legally empowered to confer" certain degrees, etc. The title of the act relates to graduates of "recognized literary and scientific colleges," but in the body of the statute these vague and indefinite terms are supplanted by words of exact and precise meaning.

"Literary or scientific colleges" legally empowered to confer" the degrees specified in the act, in my opinion, comprise only such as have the express "authority of law" to confer them. Such authority must be found either in the special statutes incorporating them or in the general corporation laws enacted since 1873, providing a uniform system formation of corporations for "the support of any literary, medical or scientific undertaking, literary association, or the promotion of music, painting or other fine arts."

"The powers of a corporation must be given in plain words or by necessary implication. All powers not given in this direct and unmistakable manner are withheld. A corporation can take nothing by construction." *Commonwealth vs. E. & N. R. R. Co.*, 27 Pa. 339.

"Before the Constitution of 1873 and the corporation act of 1874 were adopted, literary institutions, such as classical and scientific colleges, were chartered specially by the legislature, and they were invested with express power to confer degrees by the statutes erecting them into corporations. So far as this power was ever delegated to the courts, its limitation was long ago made the subject of judicial construction. In the case of *St. Mary's Church*, 6 Serg. & Rawle, 505, *Tilghman*, C. J., said: "In this business of charters, the court acts under the grant of an extraordinary

17. Act May 10, 1893, Sec. 2, P. L. 39.

power of a special nature, and is confined to the cases described in the acts of Assembly." In the case of the Medical College of Philadelphia, 3 Wharton, 445, the Supreme Court refused to incorporate a medical college with power to grant degrees, no such privilege being conferred by the act of 1791. These principles have controlled the courts since their enunciation and are recognized as the settled law.

"In the Duquesne College Charter, 12 Pa. C. C. 491, the Alleghany county court held that the courts having power, by grant of the legislature, to charter colleges, had no power to invest them with the right of conferring degrees. Whether this power passes to and rests in an educational institution by necessary implication, is a mooted question, the right answer to which, it must be admitted, should depend somewhat on the kind of institution that claims the right. If there is a lack of legal authority at present to charter institutions of any kind with power to confer degrees, the necessity is one that appeals for legislative rather than judicial action. Pending the consummation of it, the cause of literature and of scholarship is less likely to suffer from a paucity than from a redundancy of degrees.

"For the purposes of your present inquiry, I advise you that you are not required to grant, without examination, permanent certificates under the act of 1893, except to graduates of colleges "legally empowered" to confer degrees, and the general incorporation of a literary institution under the act of 1874 does not "legally empower" it with the right." 18

Interstate comity.

582. For the purpose of establishing interstate comity in permanent licenses to teach, the superintendent of public instruction of the state of Pennsylvania be, and he is hereby, authorized to endorse normal school diplomas and permanent certificates granted to teachers in other states in the Union: Provided, That such normal school diplomas or permanent certificates are valid licenses to teach in the states by whose authorities they were issued: And provided fur-

18. Certificates to College Graduates, 14 Pa. C. C. 108, 1893.

ther, That such diplomas or certificates be accompanied by recommendations showing the holder to have taught successfully within two years, and such normal school diplomas and permanent certificates, when so endorsed, shall be available for like purpose, and have the same force and effect, as certificates of like grade, for like purpose, by the superintendent of public instruction of this Commonwealth.¹⁹

Limitation of the provisions of the act.

583. The provisions of this act shall be extended only to those states which by legislative enactment grant the same privilege to teachers of this Commonwealth.²⁰

Annulment.

584. The superintendent of public instruction shall have authority to annul such normal school diplomas and permanent certificates, endorsed and validated by himself or predecessors in office, upon complaint duly proven, of incompetence, cruelty, negligence or immorality on the part of the holder thereof.²¹

Duty of teacher to make monthly report.

585. It shall be the duty of every teacher to make out and file with the board of directors or controllers of the district, at the end of each month, a report, setting forth the whole number of pupils attending school during the month, designating whether male or female, the number of days each attended, the books used and branches taught; and until such report shall have been made, it shall not be lawful for the board of directors to pay said teacher for his or her services. The reports made in pursuance of the foregoing provisions shall be regularly filed by the secretary of the board of directors or controllers, and shall at all times be subject to the inspection of any citizen of the district.²²

Power of school directors over teachers.

586. School directors shall have the appointment of all the teachers of common schools in the district, fix the

19. Act May 11, 1901, Sec. 1, P. L. 183.

20. Act May 11, 1901, Sec. 2, P. L. 183.

21. Act May 11, 1901, Sec. 3, P. L. 183.

22. Act May 8, 1854, Sec. 27, P. L. 617.

amount of teachers' salaries, and may dismiss them at any time for incompetency, cruelty, negligence or immorality.²³

When teachers' contracts are valid.

587. Mr. Justice Gordon said in part: "By the act of April 11, 1862, teachers can only be selected by the school board, and so specific is this act upon this subject, that it requires the names of the members voting both in the affirmative and negative, to be recorded upon the minutes. This statute is a valuable one, intended to compel the expression of each individual member of the school board on a subject all important in the public education, and this for the very purpose of preventing jobbery, and the exercise of a one-man power, in the conduct of common schools; we are, therefore, not inclined to permit the abrogation of its force and efficiency by a weak construction designed to meet a particular case."²⁴

In discussing the same statutory provision for the selection of teachers, Mr. Justice Sterrett said in *Dyberry School District vs. Mercer*, 115 Pa. 564: "They are wise and wholesome provisions intended to correct gross abuses which had gradually crept into the administration of our school system, and hence it is not requiring too much to insist on a substantial compliance with the spirit if not the very letter of the act."

Substantial compliance.

588. The only instance in which a departure from the strict letter of the law has been allowed, are when the minutes show that all the members were present: *Tobin vs. Morgan*, 70 Pa. 229; or where, less than the whole number being present, the minutes set forth their names *Genesee Township vs. McDonald*, 98 Pa. 444, and show in each case that the resolution passed unanimously. In the last-mentioned case the conclusion, that there was a substantial compliance with the law, was reached "after a good deal of hesitation."²⁵

23. Act May 8, 1854, Sec. 23, P. L. 617.

24. *Dennison Township vs. Padden*, 89 Pa. 395, 1879.

25. *Heisey vs. Risser*, 3 Pa. Superior Ct. 196, 1896.

President and secretary cannot make contract.

589. By the act of April 11, 1862, teachers can only be elected by the school board, and so specific is this act, upon this subject, that it requires the names of members voting, both in the affirmative and negative, to be recorded upon the minutes. This is the only manner in which teachers can be selected, and, from the very nature of things, this power cannot be delegated.

This statute is a valuable one, intended to compel the expression of each individual member of the school board on a subject all-important in the public education, and this for the very purpose of preventing jobbery, and the exercise of a one-man power, in the conduct of our common schools; we are, therefore, not inclined to permit the abrogation of its force and efficiency by a weak construction designed to meet a particular case.

Public officers cannot, by contract, or otherwise, make over to private persons, their functions or powers, for these are committed to them for the public welfare and not for private gain. As long as their contracts do not compromise the common good, or tend to defeat the purposes for which they are elected, they may be enforced, but when they pass this line they have no legal efficacy.²⁶

Directors cannot elect teachers by secret ballot.

590. On June 20, 1896, Heisey was elected teacher by secret ballot, the contract was entered into between Heisey and the school board, duly signed by the president and countersigned by the secretary, providing for his employment for the ensuing school term at \$40.00 per month. On July 18, 1896, the school directors held another meeting and selected Wolfersberger to the same position who performed the duties as teacher for the said district.

Heisey then filed his petition for a writ of alternative mandamus to compel the directors to reinstate him to the position to which he was elected; and upon a motion to quash, President Judge Rice said in part :

26. School District of Dennison Township vs. Padden, 89 Pa. 395, 1879.

“The act of April 11, 1862, P. L. 472 provides :
“That no teacher shall be appointed or dismissed
. except by the affirmative votes of a majority of the
whole number of the directors or controllers thereof; and
. the names of the members voting, both in the affirmative and the negative, shall be so entered on the minutes of the board by the secretary.” The relator claims that he was elected or chosen a teacher by a majority, but admits that it was by a secret ballot and that the names of the members voting in the affirmative and the negative were not entered on the minutes. Where the directions of a statute are given with a view to the proper, orderly and prompt conduct of business merely, the provision may be regarded as directory. But where the fair interpretation of a statute, which directs acts or proceedings in a certain way, shows that the legislature intended compliance with such provision to be essential to the validity of the act or proceeding, the statute must be regarded as mandatory. Of this latter nature is the statutory provision under consideration. It relates to a power conferred on the directors which concerns the public, and the method of exercising it is prescribed in order that the public may know whom to hold responsible for action which so deeply concerns them.

To hold that it is merely directory, and that the board may at pleasure substitute a secret ballot, and thus make it impossible for the secretary to record the affirmative and negative votes, would defeat the manifest purpose for which it was enacted. Here there was neither literal nor substantial compliance with the law. Indeed, where the election is, as it was in this case, by secret ballot, the secretary has no means of ascertaining how the members voted, and therefore it is impossible for him to comply with the law by recording the names of the members voting in the affirmative and negative. We are unable to agree with the relator that the failure of the directors to conduct the election and to have the result recorded, as provided by law, does not affect the validity of his appointment and his right to be inducted into the place to which he was chosen. It was incumbent on him to show an appointment to the place

by the board of directors in the manner prescribed by law. A contract of employment without such appointment, although executed in due form by the officers of the board, gave him no vested right to the position and to this extraordinary legal remedy for its enforcement." 27

Duty of school directors, to record the vote in employing school teachers.

591. In *Burke vs. School District*, the district attacked the validity of the contract, employing a teacher for the term of three years on the ground that the minutes of the school board did not contain "the names of the members voting both in the affirmative and the negative upon the question of her election," the minutes showing that "all members answered to the roll call," and that the report of the teachers' committee was adopted, "all members voting in the affirmative."

In delivering the opinion of the Superior Court, Beaver J. said:

"By the 4th section of the act of April 11, 1862, P. L. 471, it is provided that, inter alia, 'No teacher shall be appointed or dismissed, except by the affirmative votes of a majority of the whole number of the directors or controllers thereof, and, in each of said cases, the names of the members voting both in the affirmative and the negative, shall be entered on the minutes of the board by the secretary, etc.

"This act of assembly has been construed many times, especially in *Dennison School District vs. Padden*, 89 Pa. 395, and in *Dyberry School District vs. Mercer*, 115 Pa. 559. In the latter case, it was said: "The refusal of the board to retain her as a teacher, after the expiration of the first four months, was not controverted; but it was denied that she had ever been employed for the last three months. It was, therefore, incumbent on her to prove that she had been so employed; and, for that purpose, testimony, consisting chiefly of loose declarations of members of the school board, was introduced and submitted to the jury. It is un-

27. *Heisey vs. Risser*, 3 Pa. Superior Ct., 196, 1896.

necessary to refer specially to the testimony on which she relied. There was nothing in the minutes of the school board to show that she had been duly appointed teacher for the three months in question." Later, Mr. Justice Sterrett, who delivered the opinion of the court, said: "In the case last cited (*Dennison School District vs. Padden*) we held, that, in the selection of school teachers, the provisions of this act must be strictly complied with; and we are not disposed to recede from that position. They are wise and wholesome provisions, intended to correct gross abuses which had gradually crept into the administration of our school system and hence it is not requiring too much to insist on a substantial compliance with the spirit, if not the very letter, of the act."

"The objection here is not that the minutes of the school board do not show an employment nor that they do not show an affirmative vote by all the members of the board, but that the vote is not recorded by giving the names of those who voted in the affirmative and negative respectively."

In the present case there were no negative votes. "All the members voted in the affirmative," all being present, as it affirmatively appears in the minutes that all answered to the roll call. Is this not a substantial compliance with the spirit of the act, though perhaps not with its very letter? We think it is. If there had been a division, it would have been necessary, in accordance with the terms of the act, to record the names of those who voted in the affirmative and of those who voted in the negative; but, there being no division and the names of the members of the school board being known, the record that all the members voted in the affirmative was a sufficient minute upon which to base the employment of the plaintiff, and, indeed, this has been practically decided in *Tobin vs. Morgan*, 70 Pa. 229, in which Mr. Justice Sharswood, delivering the opinion, says: "The minutes state that all the members were present and the resolution imposing the tax was passed unanimously. The act evidently contemplated that the ayes and nays should be recorded only when there were members voting both in the affirmative and negative." See also *Genesee Twp.*

School District vs. McDonald, 98 Pa. 444 ; Comth. ex rel. Heisey vs. Risser, 3 Pa. Superior Ct. 196.²⁸

School boards should not exclude women because of their sex.

592. Mr. Justice Williams said : " No woman should be excluded from any position she is competent to fill because of her sex, and if we may judge from the figures before us, showing the great majority of the teachers in Philadelphia to be women, we should conclude that the board of education were of the same opinion. No woman qualified for supervising principal should be refused appointment because of sex alone. In balancing the arguments for and against an appointment to a particular school, the board of education may, and they could not intelligently dispose of the question if they did not consider the sex and age of the pupils ; the kind of treatment necessary to the enforcement of proper discipline ; the measure of physical strength ; the facility and experience in the management of pupils on the part of each of the applicants ; and in so far as the sex of the applicant might seem likely to help, or to be in the way of success in the maintenance of the discipline necessary for the good of the school, it may be considered with the other qualifications, and help to determine the choice. Standing by itself it is neither a controlling qualification nor disqualification. It is a circumstance that may be helpful with some pupils, or in schools of a particular grade, and not helpful with other pupils or in other schools. The question of eligibility is one thing. The selection among a class of eligibles is quite another. Sex ought not affect the first, it may help under some circumstances to determine the last. The clause in the constitution, if applicable to this case, removes any barrier in the way of the selection of the plaintiff which her sex might otherwise have presented, so that she may apply for any office of control or management under the school laws, and be legally competent to hold it if appointed to it. It does not require that she shall be appointed if she becomes a candidate."²⁹

28. Burke vs. School District, 28 Pa. Superior Ct. 16, 1905.

29. Sherry vs. Jenks, 154 Pa. 368, 1893.

Teachers of stenography and typewriting.

593. It shall be lawful for the board of school directors or school controllers in any common school district in this Commonwealth, to employ teachers of stenography and typewriting, without requiring the person employed for this purpose to have a teacher's certificate from the county, city or borough superintendent of public instruction as now required by law; but no such person shall be permitted to teach any other branch than those herein expressly named, and no such employment shall be permitted until it shall have been approved in writing by the county, city or borough superintendent, as the case may be, and shall have been submitted to and approved in writing by the state superintendent of public instruction.³⁰

Right of patrons to petition for or against the appointment of a teacher.

594. Some of the patrons presented a remonstrance to the school board protesting the appointment of Jesse Lavery as teacher. The school board refused to elect him on account of the remonstrance, whereupon he instituted suit against all the signers of the petition for conspiracy.

Mr. Justice Agnew said: "The paper signed by the defendants was a request to the school directors not to employ the plaintiff, under any circumstances, as a teacher in school No. 4 for the coming term. It preferred no charges and gave no reasons, and was a simple expression only of the wishes of the signers. It was the right of these citizens of the district thus to declare their desire. They had a right to express a preference or to declare their objection to any one applying for appointment. They were deeply interested, and had therefore a right to speak out. But we cannot recognize the position to which the argument of the plaintiffs in error leads, that such a right of expression can be made a channel through which men may gratify their malice and enmity. This would be the actual result of the argument that the right of petition is so sacred that the private purposes and motives of the actors cannot be in-

30. Act June 23, 1897, Sec. 1, P. L. 193.

quired into. If they cannot, and if the real purpose of the petition be the gratification of ill-will and malice without cause, then men may be borne down by the power of their enemies, especially in numbers and by combination, and their efforts in life to earn bread, and support those dependent on them, may be frustrated merely for the gratification of base and malevolent feelings. A groundless petition instigated only by malice cannot surely be the right of any citizen where it actually results in harm to the object of its malicious purpose."³¹

Minimum salary of school teacher.

595. The minimum salary of school teachers, teaching in the public schools of this Commonwealth, shall be thirty-five dollars per month.³²

It shall be the duty of the president and secretary of the school board, of each school district in this Commonwealth, to make report, under oath, to the superintendent of public instruction, that the requirements of this act have been fully complied with.³³

Every school district of this Commonwealth failing to comply with the requirements of this act, shall forfeit its state appropriation for the whole time during which this act has been violated.³⁴

Dismissal of teacher for immorality. Accused entitled to be heard.

596. The board of trustees of a state normal school passed a resolution convicting the principal of immoral conduct and dismissed him from office, without notice or hearing. The court held that the action of the trustees was irregular and unjust. A good character is a necessary part of the equipment of a teacher. Take this away, or blacken it, and the doors of professional employment are practically closed against him. Before this is done there should be at least a hearing, at which the accused may show that the things alleged are not true, or if true are susceptible of an

31. *Vanarsdale vs. Lavery*, 69 Pa. 103, 1871.

32. Act April 9, 1903, Sec. 1, P. L. 162.

33. Act April 9, 1903, Sec. 2, P. L. 162.

34. Act April 9, 1903, Sec. 3, P. L. 162.

explanation consistent with good morals and his own professional fidelity.³⁵

Dismissal of teacher for incompetency.

597. After a visitation of A's school, the school board decided that the recitations were poor, deportment bad, scholars lifeless and indifferent in studies, and that the teacher displayed inability to get up any enthusiasm in studies whatever, and that he had no discipline. At the regular meeting of the board, it was decided to dismiss him for incompetency, which was regularly entered upon the minutes. The teacher instituted suit for the amount of salary due, but the court held on the trial that unless he could prove that the members of the board acted corruptly or in bad faith, or that they were guilty of any clear abuse of their powers, he could not recover.³⁶

Dismissal of teacher for refusing to be vaccinated.

598. Judge Arnold said :

"As school directors may, in the exercise of a sound discretion, exclude from the public schools pupils who have not been vaccinated, as was decided by the Supreme Court in the case of *Duffield vs. The Williamsport School District*, 162 Pa. 476 (1894), so may they exclude teachers and other employees for the same reason. The protection which vaccination is believed to afford must be reciprocal ; teachers and pupils are alike entitled to protection against contagious disease. Whether vaccination is a preventive of small-pox this court has no power to investigate and decide. The legislature has authorized, and the Supreme Court has sustained regulations requiring vaccination, and therefore a court of the first instance is prohibited from inquiring into the efficacy of vaccination as a preventive of small-pox : *Field vs. Robinson*, 198 Pa. 638 (1901). The opinion of the plaintiff that vaccination is not a preventive, and that it would be dangerous to her health, is not a sufficient reason to exempt her from obedience to the order of the board of education requiring vaccination. Hence the offer of the plaintiff to

35. *Normal School vs. Cooper*, 150 Pa. 78, 1892.

36. *McCrea vs. School District*, 145 Pa. 550, 1891.

show that she considered it dangerous to her health was irrelevant and immaterial, and was properly rejected.

"The plaintiff having refused to obey the order of the board of education to produce a certificate of successful vaccination within the last five years, the chairman of the girls' high school had full authority to suspend her and report his action to the committee for ratification, which has been done. In all cases of this kind requiring prompt action, authority to act in the first instance resides in the chairman or other visiting member of the committee, subject to the approval or disapproval of the whole committee.

"The contention of the plaintiff that she cannot be suspended except for incompetency, cruelty, negligence or immorality, under the act of May 8, 1854, P. L. 622, if that were the only act bearing on the subject, is not sustainable. Under the act of March 3, 1818, 7 Sm. Laws 53, which, by section 50 of the act of 1854, was declared to be concurrent with the provisions of that act, the board of public education of the first school district has the general superintendence over all the schools established under and by virtue of that act in the said district, and may make such rules and regulations for their own government and for the general regulations of the district as may be deemed necessary for carrying the act into complete effect. Even if the act of 1854 were the only statute on the subject, we have no hesitation in saying that disobedience of the reasonable orders of the board of education is an act of negligence. There are, however, other causes for which a teacher may be suspended or dismissed. Thus, incurable disease, loss of reason or hearing or sight or limbs may result in the loss of employment by a teacher, yet it is not necessary that these causes should be written in the laws or rules of the school. The law applicable to cases of this kind is the ordinary law of master and servant. If the servant disobeys the reasonable orders of his employer, he may be suspended or discharged. In the present case the plaintiff is "too self-opinionated," as has been said in the books: See *Wood on Master and Servant*, 116; *Cassidy vs. Janauschek*, 17 Phila., 325. She has set up her own opinion against that of the board of education. She

has refused to comply with a lawful regulation of the board. Therefore, she is subject to suspension and dismissal.”³⁷

Teachers may be dismissed for insubordination and disobedience.

599. Chief Justice Lowrie said: “A schoolmaster was dismissed by the board of school directors for gross insubordination and disobedience; and this seems to have given rise to a partisan division in the township and in the board, and two annual township elections turned upon it. This is very much to be deplored. The encouragement and promotion of official disobedience is a very bad way of correcting the errors of superior officers. How can the people expect good instruction for their children from an insubordinate teacher, perhaps himself the leader of the strife that grew out of this disrespect of the school directors? How can they expect good men to be directors, when their very performance of their duty is made the ground of a general neighborhood quarrel? How can they expect their children to grow up into orderly citizens, when teachers, schoolmasters, and people, refuse to respect the law? No doubt, so bad an example as this may do good to others, by being a warning to them; but surely a good example would have been better for all. A school system under popular control will be no blessing to us, if it be so conducted as to beget among the people habits of disregard for their own law. Society is worthless if it has no abiding rule of order.”³⁸

Liability of school directors for the dismissal of a teacher.

600. School directors, acting within the scope of their authority in the dismissal of teachers, are not answerable in damages for the consequences of their acts, unless done maliciously and with an intent to injure.³⁹

The action of the board, if it be properly entered upon the minutes in the form and manner required by the statute in the case of a dismissal, is conclusive, unless the board

37. *Lyndall vs. Board of Education*, 10 D. R. 665, 1901.

38. *The Township of Dickinson vs. Linn*, 36 Pa. 431, 1860.

39. *Burton vs. Fulton*, 49 Pa. 151, 1865.

can be shown to have acted corruptly or in bad faith, or to have clearly abused their powers.⁴⁰

Power of school board to pass upon the charge of cruelty of a teacher.

601. A was employed by the school district to teach in Byerly School House No 4, for a term of seven months, beginning in September, 1887, at a salary of \$40 per month. He performed the duties of a teacher at said school house from September 12, 1887, to December 19, 1887, when he was dismissed and ousted from his school by the board of directors for having inflicted cruel and severe punishment on B, a pupil in the school taught by him.

The dismissal was not ordered until after the investigation convinced the directors that the teacher was guilty of cruelty.

A brought suit against the district for salary as teacher for the unexpired term.

In reviewing the case, Mr. Justice Clark said, in part :

“The board of school directors had the power to dismiss this teacher for incompetency, cruelty, negligence, or immorality. This power is expressly given in paragraph V., section 23, Act of May 8, 1854, P. L. 622, and was reserved in the contract.

“As a deliberative body, a board of school directors is entrusted with the government of the schools, and by the statute is empowered both to employ teachers, and for the causes stated to dismiss them. The board, therefore, had jurisdiction, under the statute, to pass upon any charge of this character, and in its determination was held merely to the exercise of good faith, and was answerable only for an abuse of its powers. By the mere fact of his employment as a teacher, the plaintiff submitted himself to the jurisdiction of the board in respect of the matters mentioned in the statute, and the action of the board, if it be entered upon the minutes in the form required by the statute, is conclusive. But the action of the board in effecting the dismissal

40. Whitehead vs. School District, 145 Pa. 418, 1891.
Custer vs. School District, 12 Pa. Superior Ct. 102, 1899.
McCrea vs School District, 145 Pa. 550, 1891.

of a teacher must be set forth upon the minutes, as required by the statute. The minutes are, therefore, the best evidence of the teacher's dismissal, and are conclusive, unless the board may be shown to have acted corruptly or in bad faith, and to have clearly abused its powers."⁴¹

Teachers have the right to use corporal punishment.

602. This is an application for the discharge of the defendants, who are teachers in one of our public schools, who are accused with an assault and battery by the unreasonable correction of one of their pupils. And the simple question for decision is, whether from the facts disclosed, they have been guilty of a violation of the law.

In this city and county, where we are annually expending nearly \$350,000.00 for the purpose of common school education, where our schools number more than 50,000 children, with the appropriate number of teachers for their instruction, it is important that the law as to the rights of each, should be correctly understood; and as it is feared it is not, a few moments will be occupied in giving what I conceive to be the settled principles of the common law upon this subject.

The right of a parent to correct his minor child is understood. It is one of the first rules in our domestic relations; and yet it is equally clear that the parent may be held responsible for the cruel or barbarous treatment of his child. The school teacher, while a child is placed by the parent or guardian in school, or under charge of the teacher, is in *loco parentis*, and can exercise the same authority as the parent, and is responsible in the same manner, and the rules of law which are applicable to the parental control, are also to be applied to the school teacher.

An able and accomplished American law writer, has now given us a plain and intelligent rule, which I will quote at length. When writing upon this subject, he says:

"The parent has a right to govern his minor child, and as incident to this, he must have power to correct him. The maxim is, that he has power to chastise him mod-

41. Whitehead vs. School District, 145 Pa. 418, 1891.

erately. The exercise of this power must be, in a great measure, discretionary. He may so chastise his child as to be liable in an action by the child against him for battery. The child has rights which the law will protect against the brutality of a barbarous parent. I apprehend, however, it is a point of some difficulty to determine, with exact precision, when a parent has exceeded the bounds of moderation. That correction which will be considered by some triers as unreasonable, will be viewed by others as perfectly reasonable. What may be considered by some as venial folly, to which none or very little correction ought to be applied, by others will be considered as an offence that requires very severe treatment. The parent is bound to correct a child so as to prevent him from becoming the victim of vicious habits, and thereby proving a nuisance to the community. The true ground on which this ought to be placed, I apprehend is, that the parent ought to be considered as acting in a judicial capacity when he corrects, and, of course, not liable for errors of opinion. And although the punishment should appear to the triers to be unreasonably severe, and in no measure proportioned to the offence, yet if it should also appear that the parent acted conscientiously and from motives of duty, no verdict ought to be found against him.

“But when the punishment is, in their opinion, thus unreasonable, and it appears that the parent acted *malo animo*, from wicked motives, under the influence of an unsocial heart, he ought to be liable to damages. For error of opinion he ought to be excused, but for malice of heart he must not be shielded from the just claims of the child. Whether there was malice may be collected from the circumstances attending the punishment. The instrument used, the time when, the place where, the temper of heart exhibited at the time, may all unite in demonstrating what the motives which influenced the parent. These observations are equally applicable to the case of a school master, or to any one who acts in loco parentis.” *Reves' Domestic Relations* 288; 1 *Blackstone's. Com.* 58.

To the doctrine here laid down we entirely assent, for

it is unquestionably the law, based upon the soundest principles which control civil society.

To render a parent liable to prosecution by his minor child, he must be governed by motives of malice or wickedness. For a mere error of judgment, influenced, perhaps, by fond parental love for the future posterity and the happiness of his child, he cannot be held legally liable. The law does not permit a court to invade the sanctuary of the domestic circle and usurp the parental authority in every family, because we think the punishment is severe. It is only when, from the surrounding facts and circumstances of the case there is strong reason to believe that the parent has been actuated by bad and malevolent motives, using his legal parental authority for the gratification of a mind bent on mischief, that the law has given the court the right to interpose for the safety and protection of the child. Such is the rule relative to the school teacher, whom the parent, for the time being, had placed in his stead.

Let us, then, apply the rule to the facts of the present case. What is there in this case which shows a wicked motive or malice on the part of the teacher? Is there anything which shows even passion or temper?

The child has played truant. It was arrested by the parent and sent with an elder sister to school; when brought to the door of the school room, she refuses to go in; began to show great violence of temper and rebellion; an assistant teacher tries to soothe the child, and uses persuasion to induce her to enter the school room. The elder sister communicates the request of the mother that the child be taken to school. The principal teacher then comes and takes the child into the school room, when the spirit of rebellion continues, manifested by screaming and jumping. The teacher talks to the child, urges obedience in mildness, then commands it, and finally threatens chastisement; but all this to no purpose. Then it is she flogs the child with a small rattan. After a few blows she stops, reasons with the child, but exacts obedience, and still uses persuasion. The child is still obstinate, and further chastisement is inflicted, till finally the obstinate and rebellious spirit is conquered.

What is there in this which shows malice or cruelty on the part of the teacher? What is there in the language of the law which shows a "wicked motive?" I can see nothing. The teacher required obedience to the rules of the school and it was refused. That punishment is used which she thinks is best calculated to produce submission, and in the manner and form common in all schools. This authority the law has delegated to her, and for the exercise of it, although we might differ in opinion as to the manner in which it was done, at least the court will not punish for or correct an error of judgment. But from the facts disclosed I do not think there was even an error in that particular. She entered upon the performance of her duty with moderation and firmness, as well as a determination to produce submission, which she pursued until it was accomplished by the best means her judgment dictated. In this we think she was right. Had she done less, the directors of the school might with propriety have thought she was culpable; and for these things the law does not hold her responsible.

But it has been said there were marks of violence on the child the next day, caused by blows from the rattan. But this is but a slight circumstance to show the motive. It is much greater evidence of the obstinacy and perseverance of the child. The instrument employed was a small smooth rattan, certainly a moderation in the instrument used in these days of improvement in education, and in most that is useful or which adds to the comfort of man. For many of us can well recollect when the birch or hickory stick, with some rather sharp knots thereon, was the instrument of flagellation, and our parents did not complain.

To hold that under such circumstances, a teacher shall be liable to a criminal prosecution, would be subversive of all government and order in our schools. Without a firm, controlling power is exercised by school teachers, in exacting obedience, submission, united with quiet and good order in their schools, the public money is worse than wasted. Obedience to parental authority should be taught in the family, and must be maintained in our schools, or we shall have no obedience to the laws of our government. To the

want of the proper exercise of strict parental control among a large class of citizens, may be traced in a great degree, the spirit of insubordination, disobedience of law, and the outrage upon the rights of others, that are so frequent among us.

Much may be hoped from the influence of our public schools, if the teachers are faithful in teaching and exacting obedience from all under their charge.

The character and interest of the teacher, combined with the refinement which education gives to the human mind in softening the heart, like paternal love, is generally found a sufficient protection for the children. But if these fail, the law affords ample protection against cruelty and oppression, while it is a shield to those who, in their sphere, have, as in this case, only done their duty. For the reasons given, we order the defendant to be discharged.⁴²

Government of schools. Corporal punishment.

603. A, a school teacher, the defendant stands charged in the bill of indictment with the offence of assault and battery. An assault is an attempt or offer to beat another without touching him. A battery is defined in law to be the unlawful beating of another.

It is conceded that the teacher took this boy by the coat or collar and made an effort to take him out of his seat for misbehavior as a pupil in the school. Under ordinary circumstances this would be a battery, but by reason of the fact that A was a teacher in a public school in Marysville, he had a right not only to place his hands upon his pupils, but to punish them in case of an infraction of the rules.

This punishment that the law allows a teacher to inflict upon his pupils is a reasonable punishment. It must not be cruel or oppressive and the inquiry to which your attention is directed is, what does reasonable punishment mean? There must be subordination in the school room. The teacher must be master. In order to control the school he is justified in using as much force as is necessary to subdue re-

42. Commonwealth vs. Bryant, 5 Clark 78, 1873.

fractory pupils and enforce all such rules and requirements as he may see fit to adopt for the government and conduct of the school. I do not mean brutal or cruel force, but such force as is commonly used in schools to compel the obedience of pupils. Having the right to punish to secure obedience he is not required to weigh the strokes he inflicts upon a refractory pupil in apothecary scales. He may only inflict such punishment as is necessary to attain the end in view, to wit: The subduing of the pupil who is refractory as well as to deter disorderly and lawless members of the school. The teacher may not inflict punishment maliciously, that is, out of spite, hatred or ill will, nor out of a mere desire to inflict pain in order to humiliate a pupil, but his right to inflict punishment to secure obedience is unquestionable.

It is unquestionable in this case that the boy was misbehaving when the teacher went to him. Others may have misbehaved at the same time and place, but the fact that they were not punished by the teacher is no reason why this boy should not be punished. If an example was made of one boy the effect of that example would probably be to deter others from the like misconduct.

Evidence has been offered to show that this boy resisted the teacher by grasping the desk when the teacher tried to take him from it. It was the duty of the teacher to enforce obedience and subdue the boy. If in the course of his resistance to the teacher this boy received an abrasion on his elbow and lumps on his head, and even a black eye, he might have avoided these injuries by a compliance with the teacher's demands.

But when a teacher takes charge of a school containing boys of that age, it is his duty to bring them up, as nearly as he can, to the standard which they themselves know—to that standard expressed by the boy, that they should study and behave themselves. And in order to secure the attention of pupils to their studies and to secure good behavior in the school it becomes the duty of the teacher to inflict such punishment as is necessary to accomplish these ends. Teachers must secure good behavior in

the schools, otherwise our whole common school system is a failure and the vast sum of money, that the American people so cheerfully pay for the education of their youth, will be wasted. For this reason I say to you that it is the duty of the jury to sustain a teacher in all proper efforts to attain the object for which he is employed.

I can conceive how two courses are open to a teacher. He can, if he pleases, avoid friction, in his school by allowing the pupils to do as they please and draw his pay and go away contented. The conscientious teacher will not do this, but he will attempt to bring his school up to the standard that is expected of him. He will attempt to secure good order in the school and attention to the studies in which the pupils are engaged. That is his duty, and a teacher who attempts or tries to perform that duty deserves not only the commendation of the patrons of the school and parents of the children, but the support of a traverse jury in case he is wrongfully accused of undue severity in the punishment of a pupil. Therefore, unless this teacher acted maliciously or punished the boy with cruelty or from wicked motives he should be acquitted. If, however, you believe that he acted maliciously toward this boy, or he punished him with cruelty or from wicked motives, then you can convict him.⁴³

Offences out of school.

604. The jurisdiction and authority of the teacher over the pupil are neither limited by the school house walls, nor to the time the school is actually in session. As a general rule, in all matters legitimately connected with the schools and the manners and morals of the scholars, the teacher's jurisdiction, conjointly with that of the parent, commences when the pupils leave the parents' roof and control to go to school, and continue until their return from school. The teacher, however, is not responsible for the misconduct of pupils on the way to and from school, though he has the right to punish for such misconduct, when brought to his knowledge.⁴⁴

43. Commonwealth vs. Ebert, 3 Pa. J. L. Rep. 252, 1901.

44. School Laws and Decisions, page 153, 1903.

Quo warranto.

605. Right to office of school teacher must be settled by quo warranto, not by mandamus.⁴⁵

45. Commonwealth vs. Risser, 3 Pa. Superior Ct. 196, 1896.

CHAPTER XXIV.

SECTARIANISM.

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Appearances of sectarianism.

606. Whereas, It is important that all appearances of sectarianism should be avoided in the administration of the public schools of this Commonwealth.¹

Wearing of any religious dress or emblem prohibited.

607. No teacher in any public school of this Commonwealth shall wear in said school or whilst engaged in the performance of his or her duty as such teacher any dress, mark, emblem or insignia indicating the fact that such teacher is a member or adherent of any religious order, sect or denomination.²

Penalties for violation of provisions of this act.

608. In case of violation of the provisions of the first section of this act by any teacher employed in any of the public schools of this Commonwealth, notice of which having been previously given to the school board employing such teacher that it shall be the duty of such school board to permanently suspend such teacher for employment in such school for the term of one year, and in case of a second offense by the same teacher it shall be the duty of said school board to permanently disqualify such teacher from teaching in said school, and any public school director failing to comply with the provisions of this act shall be guilty of a misdemeanor and shall be punishable, upon conviction of the first offence, by a fine not exceeding one hundred dollars, and in case of a second conviction or the violation of the provisions of this act, the offending school director shall be punished by a fine not exceeding one hundred dollars and shall be deprived of his or her office as a

1. Preamble Act June 27, 1895, P. L. 395.

2. Act June 27, 1895, Sec. 1, P. L. 395.

public school director. A person thus twice convicted shall not be eligible to appointment or election as a director of any public school in this state within the period of five years from the date of his or her second conviction.³

Use of school houses.

609. It shall be lawful for school boards to grant the use of school houses for lyceum and other literary purposes, non-sectarian, in their respective school districts.⁴

Reading of Holy Scriptures is not sectarian instruction.

610. Judge Edwards said: It is worthy of comment and reflects creditably upon the good sense of the people of Pennsylvania that, although our common school system has been in existence for many years, and that, as a general rule, in a large number of school districts throughout the state, portions of the Holy Scriptures have been read as a part of the daily opening exercises, nobody up to this time has taken such interest in the question as to secure a decision upon it from our court of last resort. Neither have the courts of common pleas been called upon to decide the question, as far as we can ascertain, except in one instance viz., in Mercer County, in the case of Hart et al. vs. The School District, &c., 2 Lanc. Law Rev. 346, in which the judge writes an elaborate opinion, his views coinciding with ours.

Nevertheless, a case of this kind is interesting and important, especially as a study of the principles of government so far as they relate to the individual rights of citizens. The questions involved have produced a wide variance of opinions among learned men. Eminent judges and appellate courts have reached different conclusions; the resources of ripe scholarship, with the keenest logic and the most elaborate research, have been displayed and used in the elucidation of these questions.

The sections of the constitution which the plaintiff claims are being violated by the reading of the Bible in the public schools are the following:

3. Act June 27, 1895, Sec. 2, P. L. 395.

4. Act April 11, 1901, P. L. 78.

Article I., Sec. 3.—All men have a natural and infeasible right to worship Almighty God according to the dictates of their own consciences ; no man can of right be compelled to attend, erect or support any place of worship or to maintain any ministry against his consent ; no human authority can in any case whatever control or interfere with the rights of conscience ; and no preference shall ever be given by law to any religious establishments or modes of worship.

Article X., Sec. 2.—No money raised for the support of the public schools of the Commonwealth shall be appropriated to or used for the support of any sectarian school.

The objections may be thus briefly stated: (1) the reading of the Bible in the public schools is in violation of the rights of conscience ; (2) it involves compulsory support of a place of worship ; and (3) it is sectarian instruction.

We shall only incidentally discuss the first and second objections. The first was not strenuously urged upon us, by counsel, although we deem it worthy of great consideration ; and the second is untenable on any reasonable ground. The third is the objection which is the subject of the most serious contention. We shall not consider these objections *seriatim*, but shall briefly state some of the general principles which underlie and ought to control the decision of the question before us in the light of Pennsylvania jurisprudence.

It must be considered that Christianity, which is the religion of the Bible, and the Bible itself, occupy a unique position in the early and subsequent history of Pennsylvania. In the year 1700 it was enacted that "Whoever shall speak loosely thereof and profanely of Almighty God, Christ Jesus, the Holy Spirit, or Scriptures of Truth, and is thereof legally convicted, shall forfeit and pay five pounds and be imprisoned for five days in the house of correction."

This law in substance is in force to-day. When a case involving the application of this law was before the Supreme Court in 1824, *Updegraph vs. Com.* 11 S. & R. 393, it was then declared that Christianity is part of the common law of Pennsylvania, and that to maliciously vilify

the Christian religion is an indictable offence. Justice Duncan says: "Christianity was one of the considerations of the royal charter and the very basis of its great founder, William Penn; not Christianity founded on any particular tenets; nor Christianity with an established church and tithes and spiritual courts, but Christianity with liberty of conscience to all men. William Penn and Lord Baltimore were the first legislators who passed laws in favor of liberty of conscience, for before that period, the principle of liberty of conscience appeared in the laws of no people, the axioms of no government, the institutes of no society, and scarcely in the temper of any man. Even the reformers were as furious against contumacious errors as they were loud in asserting the liberty of conscience. And to the wilds of America, peopled by a stock cut off by persecution from a Christian society, does Christianity owe true freedom of religious opinion and religious worship Christianity is part of the common law of this state. It is not proclaimed by the commanding voice of any human superior, but expressed in the calm and mild accents of customary law. Its foundations are broad and strong and deep; they are laid in the authority, the interest, the affection of the people."

This broad declaration has been modified in subsequent cases. We shall only refer to a few of them. In *Harvey vs. Boies* 1829, 1 P. & W. 12, Justice Gibson uses this language: "Christianity has been indefinitely said to be a part of the law of the land. The law undoubtedly avails itself of the obligations of Christianity as instruments to accomplish the purposes of justice Christianity is indeed, recognized as the predominant religion of the country, and for that reason are not only its institutions, but the feelings of its professors, guarded against insult from reviling or scoffing at its doctrines; so far it is the subject of special favor. But further the law does not protect it."

Again in *Mohney vs. Cook* 1855, 26 Pa. 342, Justice Lowrie says: "The declaration that Christianity is part of the law of the land, is a summary description of an existing and very obvious condition of our institutions. We are a Christian people, in so far as we have entered into the spirit

of Christian institutions and become imbued with the sentiments and principles of Christianity ; and we cannot be imbued with them and yet prevent them from entering into and influencing, more or less, all our social institutions, customs and relations, as well as all our individual modes of thinking and acting. It is involved in our social nature, that even those among us who reject Christianity, cannot possibly get clear of its influence or reject those sentiments, customs and principles which it has spread among the people, so that, like the air we breathe, they have become the common stock of the whole country and essential elements of its life. It is perfectly natural, therefore, that a Christian people should have laws to protect their day of rest from desecration. Regarding it as a day necessarily and divinely set apart for rest from worldly enjoyments and for the enjoyment of spiritual privileges, it is simply absurd to suppose that they would leave it without any legislative protection from the disorderly and the immoral."

Also, in *Zeisweiss vs. James* 1870, 63 Pa. 465, Justice Sharswood says, "It is in entire consistency with this sacred guarantee of the rights of conscience and religious liberty, to hold that, even if Christianity is no part of the law of the land, it is the popular religion of the country, an insult to which would be indictable as directly tending to disturb the public peace. The laws and institutions of this state are built on the foundation of reverence for Christianity. To this extent, at least, it must certainly be considered as well settled that the religion revealed in the Bible is not to be openly reviled, ridiculed or blasphemed, to the annoyance of sincere believers who compose the great mass of people of the Commonwealth."

There are numerous other cases along the same line which could be cited. However far one case may modify the other, they all recognize the one general underlying principle that "the laws and institutions of this state are built on the foundation of reverence for Christianity." Other illustrations of this principle are furnished by customs, laws and decisions relating to other matters, such as the opening of the state legislatures and congress with

prayer ; the custom, not now compulsory, of swearing by the Holy Book ; the recognition of the Christian Sabbath to the exclusion of any other ; the prohibition of worldly labor on the Christian Sabbath ; the refusal of courts to excuse jurors and parties from attendance on days by them considered sacred ; the making of Good Friday a legal holiday ; the exemption of church property from taxation ; the various forms of oaths administered in courts, and many other such instances of the recognition of Christianity in our jurisprudence which do not now occur to us. And in a state where Christianity seems to pervade its laws, customs, and institutions, to such a universal extent, can it be said for a moment, that the reading of the Bible in the public schools, without comment, is sectarian instruction, or, that such an act violates the rights of conscience or is in derogation of any constitutional principle ? We decidedly think not.

We do not understand how the reading of the Bible in the public schools can be termed sectarian instruction. The Bible is not a sectarian book. On its broad foundation Christianity rests. Without it there is no Christianity. This proposition is recognized by every division of Christendom throughout the whole world. It is not the book of any sect. Our attention is called to the fact that there are two versions of the Holy Scriptures, the Douay and the King James version, and that they differ in many particulars. The study of these differences is interesting to the theologian and the Bible scholar. We have noted over fifty points of difference, some minor and some important, but they do not concern us. The Bible in either version is substantially and essentially the same book. The following definition of the word sect, taken from the Standard Dictionary is as good as any we have seen: "A body of persons distinguished by peculiarities of faith and practice from other bodies adhering to the same general system. Specifically, the adherents collectively of a particular creed or confession ; a denomination ; communion ; as the Presbyterian sect ; the various sects of Jews, Mohammedans or Christians."

The assertion that the Bible, in either version, is a sectarian book, borders on sacrilege, and this phase of the question deserves no further consideration at our hands.

But so far as the constitutional provision in Pennsylvania on this branch of the case is concerned, it differs materially from the provision in the Wisconsin constitution; the Wisconsin case being practically the sole authority referred to by the counsel for plaintiff. Section 3 of Article X. of the Wisconsin constitution, is as follows :

"The legislature shall provide by law for the establishment of district schools and no sectarian instruction shall be allowed therein."

The provision in the Pennsylvania constitution declares that no money shall be appropriated to or used for the support of any sectarian school. The term "sectarian schools," in Pennsylvania, has a definite meaning. The history and development of the educational system, as well as the policy of the state, has fixed this meaning so that there is no doubt about it. A sectarian school is a school controlled by a particular denomination or sect. To such a school there can be no appropriation of public money by the state. And yet it is seriously argued that the reading of the Bible, without comment, at the public school in Waverly, as a part of the opening exercises, is in violation of this provision of the constitution of Pennsylvania. The mere statement of this proposition emphasizes its absurdity. But we do not base our conclusion upon this contention. We go further, and say that the reading of the Bible, as aforesaid, would not be sectarian instruction under the clause in the Wisconsin constitution.

The reading of the Bible in the public schools may also be allowed, and even commended, from a standpoint which does not involve the question of sectarian instruction nor the rights of conscience. It is conceded by men of all creeds that the Bible teaches the highest morality. In this connection we cannot do better than quote the language of Justice Story, in the celebrated Girard Will Case, 2 Howard, U. S. 127 : " Why may not the Bible, and especially the New Testament, without note or comment, be read and

taught as a divine revelation in the college—its general precepts expounded, its evidence explained, and its glorious principles of morality inculcated? What is there to prevent a work, not sectarian, upon the general evidences of Christianity, from being read and taught in the college by lay teachers? Certainly there is nothing in the will that prescribes such studies. Above all, the testator positively enjoins ‘that all the instructors and teachers in the college shall take pains to instill into the minds of the scholars the purest principles of morality, so that on their entrance into active life they may, from inclination and habit, evince benevolence towards their fellow creatures, and a love of truth, sobriety and industry, adopting at the same time such religious tenets as their matured reason may enable them to prefer.’ Now, it may well be asked, what is there in all this inconsistent with the spirit or truth of Christianity? Are not these truths all taught by Christianity, although it teaches much more? Where can the purest principles of morality be learned so clearly or so perfectly as from the New Testament? Where are benevolence, the love of truth, sobriety and industry so powerfully and irresistibly inculcated as in the sacred volume?”

The principle underlying these words of so great a jurist as Justice Story is applicable to our public schools. Apart from religious instruction, it must be admitted that sound morality is one of the foundations of good character. An education which does not involve the inculcation of moral principles is incomplete. And why cannot the common precepts of morality be taught by the reading of the Bible better than in any other way?

It is instructive in this connection to examine the opinion in the Wisconsin case, 76 Wis. 177. Although against the reading of the Bible in the public schools, the judge who writes the opinion admits the position we have taken in these words: “It should be observed, in this connection, that the above views do not, as counsel seemed to think they may, banish from the district schools such textbooks as are founded upon the fundamental teachings of the Bible, or which contain extracts therefrom. Such

teachings and extracts pervade and ornament our secular literature, and are important elements in its value and usefulness. Such text-books are in the schools for secular instruction, and rightly so; and the constitutional prohibition of sectarian instruction does not include them, even though they may contain passages from which some inferences of sectarian doctrine might possibly be drawn. Furthermore there is much in the Bible which cannot justly be characterized as sectarian. There can be no valid objection to the use of such matter in the secular instructions of the pupils. Much of it has great historical and literary value, which may be thus utilized without violating the constitutional prohibition. It may also be used to inculcate good morals—that is, our duties to each other—which may and ought to be inculcated by the district schools. No more complete code of morals exists than is contained in the New Testament, which reaffirms and emphasizes the moral obligations laid down in the Ten Commandments. Concerning the fundamental principles of moral ethics, the religious sects do not disagree.”

As to the weight of authority in America there is no question. The only decision directly holding the practice of reading the Bible in the public schools to be unconstitutional is the Wisconsin case already referred to. The American Encyclopedia of Law, Vol. 21, page 775, says: “The practice of opening school exercises by reading from the Scriptures has been attacked as sectarianism. Generally, however, the constitutionality of the practice has been upheld.” In Maine, it was held in *Donahoe vs. Richards*, 38 Me. 379, that a requirement by the superintending committee that the King James version of the Bible should be read in the public schools was in violation of no constitutional provision and binding upon all members of the school, though composed of divers religious sects. In Massachusetts it was decided in *Spiller vs. Woburn*, 12 Allen, 127, that the committee might require the schools to be opened each morning with reading from the Bible and with prayer. In Illinois and Nevada a similar view was taken. In Iowa, *Moore vs. Monroe* 64 Iowa, 367, it was held that

a statute providing that the Bible should not be excluded from the schools was constitutional. But the court left the use of the Bible in the school to the option of the teachers, restricted only by the provision that no pupil should be required to read it contrary to the wishes of his parents or guardians. In Ohio, in a case that was argued in the court below with more learning and more elaborately than any case on the same question in any other forum (*Board of Education vs. Minor*, 23 Ohio 211), the higher court refused to decide the constitutionality of the rule requiring the Bible to be read in the schools, lodging the decision of the question in the board of education, to whom the legislature had committed the exclusive management of the schools. Thus it will be seen that if the question before us is to be decided by the weight of authority, as expressed in the decision of the various states, there being only one common pleas case in Pennsylvania, it must be decided in favor of the defendants.

The argument suggested by the Iowa and Ohio cases is worthy of serious consideration. The legislature has committed the management of the public schools to boards of control or boards of school directors. In conjunction with the teachers, they decide what books shall be used in the schools. Why cannot the question of reading the Bible in the public schools, as a part of the opening exercises, be left to them? This is where the question has been practically since the common school system was established in Pennsylvania. In some schools the Bible is read; in others it is not. There is no law requiring it; there is no law prohibiting it. If it is read, the constitution is not disturbed; if a board should decide that it shall not be read, why is not such action within its discretion? We are not deciding the case at bar upon the basis suggested by this argument, but we can easily see how, upon this basis, and upon this alone, the court of last resort may finally dispose of the question.

Now, therefore, the above case having been fully heard in open court and argued by counsel, it is ordered and decreed that the bill of complaint in said case be dismissed at the costs of the plaintiff, and that the injunction heretofore granted be dissolved.⁵

5. *Stevenson vs. Hanyon*, 7 D. R. 585, 1898.

CHAPTER XXV.

PUBLIC HEALTH ACTS.

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Certain children not allowed to attend school in the several municipalities of this Commonwealth.

611. No child or other person belonging to, or residing with the family of any person or residing in the same house in which any person may be located who is suffering from

cholera, small-pox (variola or varioloid), scarlet fever, typhus fever, yellow fever, relapsing fever, diphtheria, diphtheritic croup, membranous croup or leprosy shall be permitted to attend any public, private, parochial, Sunday or other school in said municipalities, and all school principals, Sunday-school superintendents or other persons in charge of such schools, are hereby required to exclude any and all such children and persons from said schools.¹

Period of exclusion. Purpose of physician's certificate.

612. Such exclusion to continue for a period of thirty days following the discharge by recovery or death of the person last afflicted in said house or family, or his or her removal to hospital, and the thorough disinfection of the premises, and all such children or other persons as aforesaid, before being permitted to attend or return to school, shall furnish to said principal or other person in charge of said schools a certificate signed by the medical attendant of said children or persons, or by a physician to be designated by the health authorities of said municipalities, setting forth that the thirty days mentioned in this section have fully expired: Provided however, That the health authorities may by rule or regulation provide that such certificates shall only be given by a person to be designated by said authorities, and in such case no other certificate shall be recognized.²

Duty of principal of schools.

613. All principals or other persons in charge of schools as aforesaid are hereby required to refuse the admission of any child to the schools under their charge or supervision, except upon a certificate signed by a physician, setting forth that such child has been successfully vaccinated, or that it has previously had small-pox.³

Right of teachers to exclude pupils for failure to be vaccinated.

614. In this case a petition was presented to court for a mandamus against A, principal of the Keystone Public School in the city of Philadelphia, to compel him to admit

1. Act June 18, 1895, Sec. 11, P. L. 203.

2. Act June 18, 1895, Sec. 11, P. L. 203.

3. Act June 18, 1895, Sec. 12, P. L. 203.

into the school a child of B, a girl eight years of age, without being first vaccinated as required by the Act of June 18, 1895. The court refused the mandamus for the reason that a principal of the public school in the exercise of a sound discretion may exclude pupils who have not been vaccinated.⁴

Physician's certificate of vaccination or of small-pox under sec. 12, act June 18, 1895.

615. The certificate required by the act is "a certificate signed by a physician." It does not say he shall be a physician of the highest attainments or qualifications. It is fair to presume that the act contemplates a "legally qualified physician." To be registered he must be a legally qualified physician under the laws of the Commonwealth. What the act required is the certificate of a physician, showing that the child has been successfully vaccinated or had small-pox. It does not prescribe the form or language the certificate shall be in.

Undoubtedly the act intends that children must either have been "successfully vaccinated" or have "had small-pox" to be admitted to school.

The act points out how both or either of these questions shall be determined, namely, by the certificate of a physician. It does not make school boards or teachers the judges of those questions of medical science. The power to decide those questions has not been placed with them, but where reason and common sense dictate it should be placed—with a physician. When the certificate of a physician is produced to either fact, that fact is determined for the purposes of the act. It is not required that all the physicians in a place shall unite in certifying the fact or that no physician shall be of a different opinion. It is not required that the school authorities shall be satisfied by a preponderance of medical or other evidence of the fact that in any given case a child has had small-pox. The act never contemplated that the fact must be proved to the satisfaction of the school board, or in any other way than by the certificate of a physician. The

4. Field vs. Robinson, 198 Pa. 638, 1901.

duty of the school authorities is plain ; it is to admit when the proper certificate is offered. It is not to speculate as to whether or not the physician knew what he was about or had made a correct diagnosis, or whether he stands higher or lower in ability than other physicians, or whether some other physician might not think differently. It is not to get the opinion of other physicians or make inquiries as to whether any person caught small-pox from a child, or to do any of the things that from the return they seem to suppose rested upon their shoulders. The responsibility rests upon the physician and not upon them.

The physician, and not the board or teachers, is the judge of these matters, but we think it is the province of the board to determine whether or not the certificate is genuine or fraudulent.⁵

Pupils must present certificate of vaccination.

616. The children of A have been pupils in the public schools of the Borough of Hummelstown, Dauphin County, Pa., until November 17th, but upon that day they were refused admission because they had not been vaccinated. This refusal was authorized by the directors and is still maintained ; the present proceeding asks us to declare it unlawful. The defendants support the exclusion by showing the following facts: Early in October of this year the health board of the borough (appointed in pursuance of the act of 1893, P. L. 44) requested their attention to "that part of the Compulsory School Law pertaining to vaccination." This reference mistook the statute, but the mistake is not important ; every one concerned has understood fully that the legislation in dispute is section 12 of the act of June 18, 1895, P. L. 203. Acting upon the communication of the board of health, the defendants passed a resolution, of which due public notice was given, "that all (pupils) who had not already been vaccinated, must be on or before Oct. 20th, in accordance with the school laws." The date was afterwards extended to November 16th. The plaintiff de-

5. *Cousins vs. Burgie*, 13 D. R. 368, 1904.
Commonwealth vs. Smith, 14 York 69, 1900.

clined to have his children vaccinated, and presented them at school upon November 17th without a certificate, as required by the section just referred to, setting forth that they had been successfully vaccinated or had previously had small-pox. This failure to obey the requirements of the section, and of the defendants' resolution, is the single reason why the children were denied admission.

The case requires the court to determine the true meaning of the section in dispute, and to pass upon its constitutionality. The language is as follows: "All principals or other persons in charge of schools as aforesaid are hereby required to refuse the admission of any child to the schools under their charge or supervision, except upon a certificate signed by a physician, setting forth that such child has been successfully vaccinated, or that it has previously had the small-pox." The phrase, "schools as aforesaid," refers to the section immediately preceding, and includes the schools there specified, namely: "any public, private parochial, Sunday or other school in said municipalities." The plaintiff bases his principal argument upon this phrase in section 12, and insists that it compels us to construe both sections as applying to the same condition of affairs. We think, however, that this view cannot be successfully maintained. The eleventh section deals with the case of actual attack by certain infectious and contagious diseases—among them being small-pox; and provides that no child belonging to a family thus afflicted, or living in the same house, shall be permitted to attend any of the schools already named; expressly requiring "all school principals, Sunday school superintendents, or other persons in charge of such schools,to exclude any and all such children from said schools" for a certain period. The whole section contemplates complete isolation of the infected house and family; a measure which is now everywhere admitted to be indispensable. Nevertheless the plaintiff construes section 12 to mean that, immediately after commanding that pupils from infected houses must be absolutely excluded from schools, the legislature proceeded to enact, that if the disease is small-pox the children of the family may come to school, provided

a physician will certify that they have been successfully vaccinated or have previously had small-pox. In our opinion this construction must certainly be rejected. It is clear, that a vaccinated child coming from an infected house would be as likely to carry the disease to its associates as a child not vaccinated; and thus the legislature would in one breath be taking precautions against contagion, and in the next breath would probably be rendering its precautions useless.

The natural construction of the section avoids this serious difficulty. Apparently, the legislature has passed from the case of an actual attack by contagious disease, and is now considering how an attack may be prevented. In the present state of medical science, small-pox is the only disease whose attack may be prevented with reasonable certainty, and therefore no other disease is named. It is not isolation that is now in mind, but the prevention of a particular disease; and for this purpose the legislature regards it as desirable that vaccination among the children of school age should be nearly universal. To furnish parents with a strong motive to submit to this view, the act requires all principals or persons in charge of schools to exclude children, unless a physician certifies that they have been successfully vaccinated or have previously had small-pox. This is the natural meaning of the words used; and in accordance with established rules of construction, this is the meaning they must be held to bear.

The remaining question is, whether this section is constitutional. It was objected to as invalid because it is not covered by the title of the act; but the objection was not strongly urged, and need not be discussed. The title is: "An act to provide for the effectual protection of the public health in the several municipalities of this Commonwealth." Certainly one of the most obvious means of protecting the public health is to provide against the introduction of diseases into the public schools; and the next step in the train of thought leads inevitably to vaccination. No other constitutional objection was brought forward at the argument, and none has since suggested itself. The subject of the act is within the police power of the legislature, which certainly

extends to the care of the public health; and upon well-settled principles the sound discretion of the legislature ordinarily determines conclusively what are the best agencies and the most appropriate methods of carrying out its will. The limitations of this rule do not now concern us.

Indeed, the case seems to us so plain that argument is difficult. But if argument is needed, it may be found by extending the principles of *Duffield vs. Williamsport School District*, 162 Pa. 476. (The details of the case may be found in Judge Metzger's opinions, printed in the Report of the State Board of Health for 1894, at pages 518 and 525.) Mr. Justice Williams there states lucidly the reasons for deciding that school directors may in their discretion exclude from the public schools pupils who have not been vaccinated. It was held also that, whether such a resolution of exclusion is reasonable, is to be judged in the first instance by the school directors; and, if this is true of the discretion of school directors, with much stronger reasons must it be true of similar action by the ultimate law-making power in the state. In the *Williamsport* case it was feared that small-pox was about to invade the city; one attack was reported; and the disease existed in other cities and towns in the neighborhood. In the case now before the court, counsel have agreed that small-pox is not, and for at least two months has not been, epidemic in the Borough of Hummelstown; but no further fact upon the subject appears and we do not know whether or not the defendants' resolution was passed under a reasonable apprehension of danger. Neither do we consider it material to inquire further into the matter; in our opinion the legislature has the undoubted power to require vaccination as a condition precedent to admission into the public schools; and if this be true, it is unimportant whether or not small-pox exists in the municipality when the pupil seeks to be admitted. The public schools are maintained out of public funds raised by taxation—a very large contribution being made directly out of the state treasury; and it is clearly within the power of the legislature, as representing the Commonwealth, to declare upon what terms the public bounty is to be enjoyed. The act does not undertake to

compel vaccination, and therefore the questions which have been considered elsewhere concerning the power of the legislature over the human body do not now arise. The right of the plaintiff's children to attend the public schools is not complete until they have complied with the condition which the legislature has seen fit to impose. Without the certificate of a physician, as required by the statute, they cannot be admitted.

It was also argued that section 12 of the act of 1895 is in conflict with the Compulsory Education Act passed in the same year (P. L. 72).^{*} To this position at least three answers are conceivable :

First. As the ages of the plaintiff's children are not averred and do not otherwise appear, the court does not know that they are between the ages of eight and thirteen years ; and therefore, as the Compulsory Education Act only implies to children between these ages, the question suggested does not arise.

Second. If the Compulsory Education Act and the section under consideration are in irreconcilable conflict, the former statute must give way, because it was passed on May 16th ; while the Public Health Act was approved on June 18th, and being the later statute, must be enforced.

Third. The Compulsory Education Act provides that children may be excused from attendance if the school board of the district receives satisfactory evidence that attendance is prevented by mental or physical or other urgent reasons. It might therefore be held, that if a child was not vaccinated and was therefore refused admission, it was prevented from attendance by a physical reason ; and if to this suggestion the reply should be made that the parent would thus be able to evade the Compulsory Education Act by refusing to vaccinate his children, it might be rejoined that if such evasion became extensive the legislature would probably be forced to deal with it by providing for compulsory vaccination, and the question would then fairly arise whether the legislature

^{*} NOTE.—The Act of May 16, 1895, P. L. 72 was repealed by the Act of July 11, 1901, P. L. 658. See *Supra* COMPULSORY ATTENDANCE. Secs. 529-545.

possessed the constitutional power to pass such a statute. Of these three answers, we accept the first as sufficient, and express no opinion concerning the other two.

So far as we know, the question under consideration has not been heretofore decided in this Commonwealth, although the reasoning of Duffield's case points strongly to the conclusion we have reached. In the State of California it arose several years ago, and was also decided in favor of the legislative power: *Abeel vs. Clark*, 84 Cal. 226. Maine and Massachusetts have statutes similar to the section under consideration.⁶

The parents of a child who is refused admission to the public schools because they cannot produce a certificate of vaccination are not liable to the penalty provided by the compulsory education law.⁷

Registry.

617. The health authorities of said municipalities shall furnish to principals or other persons in charge of said schools, and to physicians, the necessary certificates or blanks for the uses and purposes as set forth and required in sections one, eleven and twelve of this act. The registry of said school shall exhibit the names and residences of all children or persons admitted or rejected for reasons set forth in this act, and said registry shall be open at all times to the inspection of the health authorities.⁸

Duty of health officers.

618. It shall be the duty of the health authorities in the several municipalities as aforesaid to furnish daily, by mail or otherwise, to principals or other persons in charge of said schools, a printed or written bulletin, containing the name, location and disease of all persons suffering from cholera, small-pox, (variola or varioloid), scarlet fever, typhus fever, yellow fever, relapsing fever, diphtheria, diphtheritic croup, membranous croup or leprosy, upon receipt by them of reports of such cases from physicians as required in section

6. *Nissley vs. Hummelstown Borough School District*, 5 D. R. 732, 1896.

7. *Commonwealth vs. Bauman*, 50 P. L. J. 109, 1902.

8. Act June 18, 1895, Sec. 13, P. L. 203.

one of this act: Provided, That the health authorities of any municipality may, in lieu of the daily bulletin herein required, provide that a notice shall be given to the school or schools attended by the children in whose home or residence any of the diseases mentioned in this section exist, and prescribe the form of said notice.⁹

Penalty.

619. Any physician, undertaker, principal of a school, superintendent of a Sunday school, sexton, janitor, head of a family or any other person or persons named in this act, who shall fail, neglect or refuse to comply with, or who shall violate any of the provisions or requirements of this act, shall for every such offense, upon conviction thereof before any mayor, burgess, alderman, police magistrate, or justice of the peace of the municipality in which said offense was committed, be liable to a fine or penalty therefor of not less than five dollars, nor more than one hundred dollars.¹⁰

Fine and imprisonment.

620. Said fines or penalties shall be paid into the treasury of said municipality, and in default of payment thereof, such person or persons so convicted shall undergo an imprisonment in the jail of the proper county for a period not exceeding sixty days.¹¹

Act includes townships.

621. The act of June 18, 1895, relating to vaccination of school children applies to township school districts and is not limited to cities and boroughs. A township is a municipal corporation.¹²

The Act of June 18, 1895, P. L. 203 is a valid exercise of the police power of the state.

622. Said Mitchell, C. J. :—The substantial question in this case is whether the act of June 18, 1895, P. L. 203, requiring the exclusion from the public schools of children who have not been vaccinated is a valid exercise of the police

9. Act June 18, 1895, Sec. 14, P. L. 203.

10. Act June 18, 1895, Sec. 21, P. L. 203.

11. Act June 18, 1895, Sec. 21, P. L. 203.

12. Sprague vs. Baldwin, 18 Pa. C. C. 568, 1897.

power of the state. It has been twice so decided by this court. In *Duffield vs. School District of Williamsport*, 162 Pa. 476, a similar regulation not even enacted by the legislature but enforced by the school directors under an ordinance of the city of Williamsport was held valid. And in *Field vs. Robinson*, 198 Pa. 638, this very statute of 1895 was held constitutional. It appears to be thought that because the decision was given in a brief opinion per curiam the subject was not fully considered. But the proper inference is precisely the reverse, that the conclusion was so perfectly clear to the whole court that it did not require any extended argumentative support.

After these two decisions the question ought to have been considered as closed. But we have it raised again with small variations of facts and considerations, none of which are at all material.

On the constitutional question it is said that section 12 of the act contravenes sections 7 and 8 of article 3 of the constitution in that it is local and special legislation, regulating the affairs of school districts. The terms of the act apply expressly to the "several municipalities" of the state. and it is argued that they do not include school districts in townships, and therefore make an unwarranted distinction in regard to such districts. Whether townships are municipalities within the intent of the act it is not now necessary to consider. Even if not, the separate classification of school districts in cities and boroughs with reference to public health where population is dense and the danger of contagion great, would not be unconstitutional. *Sugar Notch Borough*, 192 Pa. 349.

But the act is in no proper sense a regulation of school districts. It is an act entitled "for the more effectual protection of the public health in the several municipalities of the Commonwealth" and is a general statute on that subject. What bearing it has on schools and school districts is altogether incidental to them as constituents of the community. The constitutional restrictions on special legislation apply to direct legislation, not to the incidental operation of statutes constitutional in themselves upon other

subjects than those with which they directly deal. Sugar Notch Borough, 192 Pa. 349.

It is further said that section 12 contravenes section 1 of article 10 of the constitution, requiring the maintenance of an efficient system of public schools wherein all children above the age of six years may be educated. It is sufficient to say that this article like all others must be construed and applied in connection with other fundamental governmental powers. The schools and school children, important as they are, are only fractions of the community, and the police power of the Commonwealth in the preservation of the public health must, if necessity arises, sacrifice the less to the greater interest. *Salus populi suprema lex*. If a child manifestly suffering from small-pox in its contagious stage should be excluded from school, it is hardly conceivable that the propriety of such action should be questioned. At what period before or after the outbreak of the disease the right of exclusion should arise is a legislative not a judicial question. As said by our late brother, Williams, in *Duffield vs. School District*, 162 Pa. 476, already cited, "It is conceded that the board might rightfully exclude the plaintiff's son if he was actually sick with, or just recovering from, the small-pox. Though he might not be affected by it, yet if another member of the same family was, the right to exclude him notwithstanding he might be in perfect health, would be conceded. How far shall this right to exclude one for the good of many be carried? That is a question addressed to the official discretion of the proper officers; and when that discretion is honestly and impartially exercised the courts will not interfere." These words, it should be remembered, were written with reference to authority exercised under a city ordinance, and *a fortiore* when the police power of the state intervenes under the authority of a statute its directions are commands that may not be disputed.

It is further argued that sections 11 and 12 of the act should be read together, and the right under section 12 to exclude unvaccinated children should be confined to the schools in the districts mentioned in section 11, namely those in which small-pox is actually prevalent. But this is

manifestly not the legislative intent. Section 11 deals with a present and immediate danger, with persons, dwellings and places where the disease actually prevails, and its prohibition includes adults as well as children, vaccinated or not. Section 12 on the contrary is a cautionary and prospective regulation, having in view not the actual presence of the disease, but its appearance in the future. The objects of the two sections are distinctly different.

In this connection the learned judge below found as a fact "that there is not at the time of the filing of this bill nor has there been for a period of about forty years any person in the said borough of Waynesboro or within many miles thereof, suffering from small-pox (variolo or varioloid)," and it is argued that this feature distinguishes the case from those heretofore decided by this court. But the language of the act is general and its intent plain. The legislature may well have had in mind that the good fortune of such a community may not continue indefinitely. Immunity for forty years in the past affords no guaranty of immunity for even forty days in the future if a chance visitor from an infected locality or a borough resident returning from such a locality should bring with him the germs of infection. Section 12 is precautionary and preventive, and it is an old and sound maxim that an ounce of prevention is worth a pound of cure.

There is one hardship in the twelfth section that may deserve consideration with a view to a possible remedy. The court below found as a fact "that occasionally it is beyond the power of children of school age as well as adults to be vaccinated, although they may not previously have had small-pox nor previously been vaccinated; that even repeated attempts to perform the operation of vaccination upon such children or adults is without effect and vaccination will not take. In such cases vaccination is not successful and a physician cannot certify that such child or adult has been successfully vaccinated." The health authorities, state or local, might well consider whether they have power to make a regulation as to what should be deemed a successful vaccination or its equivalent; whether

the ratio of such immune children is of sufficient importance to justify the exercise of such power if possessed ; and whether such regulation would be undesirable as affording opportunity for the evasion of the statute. The latter, however, are medical and administrative rather than judicial questions.

Lastly, it is argued that construing section 12 as we have done it authorizes a trespass upon the reserved rights of the individual which are beyond the reach of even the police power. Vaccination, it is said, is the infliction of a disease, cow-pox, on the subject and if that can be done irrespective of his consent then the next step may be to require submission to inoculation with antitoxin or serum for diphtheria, tuberculosis, cancer, etc., and we have rather a dismal picture of the possible consequences. It will be time enough to consider such matters when they arise. At present the vast preponderance of opinion among intelligent and educated people, under the guidance of the best medical authority is that vaccination is a highly useful ameliorative if not always a preventive of one of the greatest scourges that have in past times afflicted humanity, and that the regulation of it by statute is not only a justifiable but a wise and beneficent exertion of the police power over the public health. When the legislature goes beyond that into new or more debatable fields, it will be time enough to consider the limits of its power.

One expression in the opinion of the court below, and in some of the cases cited in the argument requires a passing note. The act is not a penal statute. It is a broad, general act relating to the health of the whole population of the Commonwealth. It is not therefore to be construed or administered by the rigid technical rules applicable to penal laws, but fairly according to its intent, neither narrowing it to the letter, to the exclusion of cases clearly within such intent, nor stretching it beyond its legitimate scope to cover matters not clearly meant to be included. It is an act touching very closely common rights and privileges, and therefore specially requiring a common sense administration.

Decree affirmed.¹³

**Township school boards to exercise the power of board of health.
Power to make rules and regulations.**

623. The school directors in each township of the state of Pennsylvania shall, in addition to the powers vested in them by existing laws, have full power and authority to make and enforce all needful rules and regulations to prevent the introduction and spread of contagious or infectious diseases, by the regulation of intercourse with infected places, by prohibiting from attending any public school any child or other person belonging to or residing with the family of any person, or residing in the same house, in which any person may be suffering from cholera, small-pox (variola, varioloid), scarlet fever, typhus fever, yellow fever, relapsing fever, diphtheria, diphtheritic croup or membranous croup, or any other contagious disease; and it shall be the duty of all physicians practicing within the several townships to report to the secretary of such school board the names and residences of all persons coming under their professional care, afflicted with any of the aforesaid contagious or infectious diseases, within twenty-four hours after the development of any such disease.¹⁴

Abatement of nuisances.

624. In the case of the prevalence of any contagious or infectious disease in any township of this Commonwealth, the board of school directors of such township shall have power by themselves, or by a sanitary agent to be by them appointed, to enter at any time upon any premises in the said township in which there is suspected to be any contagious or infectious disease, or nuisance productive of such disease or detrimental to the public health, for the purpose of examining the said premises and abating any nuisance found thereon detrimental to the public health.¹⁵

Sanitary agent.

625. Before appointing any sanitary agent to aid in enforcing the rules and regulations of the board, as aforesaid,

13. Still vs. Reber 63 Jan. Term, Supreme Court, 1906.

14. Act April 11, 1899, Sec. 1, P. L. 38.

15. Act April 11, 1899, Sec. 2, P. L. 38.

the board shall make application to the court of common pleas of the county in which the township is located, or to a law-judge thereof, setting forth particularly the reasons which, in their judgment, make the appointment of such agent necessary, setting forth also the compensation which the board deems proper to pay for the services of such sanitary agent, and if the said court, or judge thereof, shall approve the reasons given by the said board for the appointment of such sanitary agent, and shall also approve the compensation deemed proper therefor, said board shall have the authority to appoint such sanitary agent for such term as may be designated by the said court or judge thereof, the said compensation to be paid out of the school fund of the respective townships.¹⁶

Duties of school directors.

626. Judge O'Connor said: "We regard the act of April 11, 1899, as mandatory in its terms, and when it gives power and authority to the school boards in townships of the state to make and enforce all needful rules and regulations to prevent the introduction and spread of contagious or infectious diseases by the regulation of intercourse with infected places, by prohibiting from attending any public school any child or person belonging to or residing with the family of any person, or residing in the same house in which any person may be suffering from the maladies named, among which is the disease known as the "small-pox" it means that the school board shall exercise the power and authority so given and not that the board can ignore the presence of such diseases in the school district when the matter has once been brought to the directors' notice.

There is no means provided by the act for the raising of any specific fund out of which extraordinary expenses could be met, but a fair construction of this act of assembly required the school board to formally adopt rules and regulations much after the practice followed by boards of health. After they have adopted such rules and regulations, as adopted by the board after the manner that health officers in various

16. Act April 11, 1899, Sec. 3, P. L. 38.

boroughs and cities enforce the provisions of the rules and regulations of the boards of health appointing them.¹⁷

School directors may be compelled to organize as a board of health.

627. A writ of mandamus will lie at the relation of the district attorney to compel the directors to organize as a board of health and perform the duties imposed on them. The more convenient and efficient and effective way for a school board to proceed in a case requiring action, is to organize a local board of health and proceed in regular and legal course, doing nothing in the premises on consultation not had together at a regular convened meeting, nor as individuals. All must be done by action of the board, assembled according to legal requirements. Individual acts, or acts of one or more members of the board, or advice and persuasion, are not what the law requires; but deliberative and rigorous action of the board legally convened for the purpose, after their making the needful rules and regulations for the prevention of the spread of the contagion, is imperative.¹⁸

Right of school directors to exclude pupils for failure to be vaccinated.

628. The facts of the case are given in the opinion of the Supreme Court, which was delivered by Mr. Justice Williams, as follows :

The plaintiff seeks to compel by a writ of mandamus the admission of his minor son to the common school of the city of Williamsport. The board of school directors admits that the child is of proper age, is in good health, and possesses the qualifications that are enumerated in the general school laws as those that entitle him to admission. They allege, however, that he is excluded because of non-compliance with a regulation adopted in the exercise of a proper measure of care for the public health. The facts appearing in the answer are substantially as follows :

First. That the city of Williamsport provided by an ordinance adopted in 1872 and still in full force that no

17. Croyle Twp. School District, 29 Pa. C. C. 93, 1904.

18. Commonwealth vs. Conewago School District, 18 York 125, 1904.

pupil "shall be permitted to attend any public or private school in said city without a certificate of a practicing physician that such pupil has been subjected to the process of vaccination." Second. That small-pox now exists in Wiliamsport and "is and has been epidemic in many near-by cities and towns." Third. That in view of this situation the attention of the school board was drawn to the subject by a communication from the board of health requesting them to take action "to the effect that no pupil shall attend the schools of this city except they be vaccinated or furnish a certificate from a physician that such vaccination has been performed." Fourth. That upon considering this communication "and from the general alarm prevailing in the city over the report that a case of small-pox was in the city" they adopted a resolution in conformity with the recommendation of the board of health. Fifth. That this resolution is not enforced against those not at present in a condition to undergo vaccination; and as to those unable to bear the expense, the board provide vaccination without charge.

The plaintiff demurred to this answer, and the questions thus raised are over the power of the school board to adopt reasonable health regulations for the benefit of their pupils and the general public, and over the reasonableness of the particular regulation complained of in this case. It should be borne in mind that there is no effort to compel vaccination. The school board do not claim that they can compel the plaintiff to vaccinate his son. They claim only the right to exclude from the schools those who do not comply with such regulations of the city and the board of directors as have been thought necessary to preserve the public health. It would not be doubted that the directors would have the right to close the schools temporarily during the prevalence of any serious disease of an infectious or contagious character. This would be a refusal of admission to all the children of the district. They might limit the exclusion to children from infected neighborhoods, or families in which one or more of the members was suffering from the disease. For the same reason they may exclude such children as decline to comply

with requirements looking to prevention of the spread of contagion, provided these requirements are not positively unreasonable in their character.

Is the regulation now under consideration a reasonable one? That is to be judged of in the first instance by the city authorities and the school board. It is only in the case of an abuse of discretionary powers that the court will undertake to supervise official discretion. Vaccination may be, or may not be, a preventive of small-pox. That is a question about which medical men differ and which the law affords no means of determining in a summary manner. A decided majority of the medical profession believe in its efficacy. The municipal regulations of many, and I have no doubt of most, of the cities of this state and country, provide for it. In the present state of medical knowledge and public opinion upon this subject it would be impossible for a court to deny that there is reason for believing in the importance of vaccination as a means of protection from the scourge of small-pox. The question is not one of science in a case like the present. We are not required to determine judicially whether the public belief in the efficacy of vaccination is absolutely right or not. We are to consider what is reasonable in view of the present state of medical knowledge and the concurring opinions of the various boards and officers charged with the care of the public health. The answers of the city and the school board show the belief of the proper authorities to be that a proper regard for the public health and for the children in the public schools, requires the adoption of the regulation complained of. They are doing, in the utmost good faith, what they believe it is their duty to do; and though the plaintiff might be able to demonstrate by the highest scientific tests that they are mistaken in this respect, that would not be enough. It is not an error in judgment, or a mistake upon some abstruse question of medical science, but an abuse of discretionary power, that justifies the courts in interfering with the conduct of the school board or setting aside its action. It is conceded that the board might rightfully exclude the plaintiff's son if he was actually sick with, or was just recovering from,

the small-pox. Though he might not be affected by it, yet if another member of the same family was, the right to exclude him, notwithstanding he might be in perfect health, would be conceded. How far shall this right to exclude one for the good of many be carried? That is a question addressed to the official discretion of the proper officers; and when the discretion is honestly and impartially exercised the courts will not interfere.¹⁹

School district not liable for the employment of a physician by the school board under act of 1899.

629. The school board quarantined the home of A. for small-pox and B., the physician, rendered medical services and charged the school district for attendance, although the physician admits that he had no contract with the school board to render the services, but claims that under the act of 1899 the school district is liable.

The court said: "It is well settled by numerous decisions of our courts that 'school districts are those sub-divisions of towns or townships made for the purpose of maintaining schools. They are not bodies politic or corporate, with the general powers of corporations, but may be considered as quasi-corporations with limited powers co-extensive with duties imposed upon them by statute or usage and therefore the strict principles of law respecting corporations cannot in all cases be applied to these aggregate bodies created usually by statute.' Even if the plaintiff had shown a contract with the school board it would be incumbent upon him to show that the board had authority to make such a contract. He relies upon the act of April 11, 1899, P. L. 38. By this act school directors of the several townships are empowered to exercise the powers of a board of health in the township, to make rules and regulations to prevent the spread of contagious or infectious diseases, and to appoint and fix the compensation for a sanitary agent. By section 2 of said act, in case of the prevalence of any contagious or infectious disease in any town-

19. Duffield vs. School District, 162 Pa. 476, 1894.

Gerhard vs. Packer Township School District, 24 Pa. C. C. 339, S. C., 9 D. R. 720, 1900.

ship, the board of school directors of such township shall have power by themselves or by a sanitary agent to be by them appointed, to enter upon any premises in said township in which there is suspected to be any contagious or infectious disease or nuisance productive of such disease or detrimental to the public health, for the purpose of examining the said premises and abating any nuisance found thereon detrimental to the public health. The appointment of the sanitary agent and the compensation which the board deems proper for his services must both be approved by the court of common pleas of the county in which the township is located, or by a judge thereof, otherwise he could not legally recover any compensation from the school board. Nowhere in the act are school directors authorized to appoint any other agents or employ any person to perform any services excepting that of a sanitary agent.

“There is no act of assembly, however, which would authorize a school board to incur any expenditure for physicians or medical attendance of the family quarantined, and we are of opinion that if the family quarantined is not of sufficient ability to provide food and medical attendance that it would be the duty of the poor authorities to make provision for such expenditures. If the person quarantined was ill of any disease not contagious, or if any member of the family was in need of the services of a physician, and they or the head of the family are not of sufficient ability to pay for the necessary food and medical attendance during such illness, it would be the duty of the poor directors to care for and maintain such family and provide the necessary medical attendance or services, and unquestionably, if such person or family was legally put upon the county it would be a neglect of official duty not to give such care and attention. There is no reason why the same rule should not apply when the person ill and needing a physician is suffering from a disease which is contagious, unless the municipality is made liable for such expenditures by law.

“In the case of boroughs and cities the statute expressly makes them liable for all necessary expenditures where the person quarantined is not of sufficient ability to

pay for food and medical attendance. In the case of a township no such provision is made by statute, and the failure of the legislature to make such provision shows a clear intention in its part to leave such liability upon the poor authorities. Unquestionably if there was no provision in law for the maintenance of a person quarantined, who was a pauper, courts would impose a liability upon the authority enforcing the quarantine, but that would be done not by virtue of any statute, but from reasons of humanity. The only duty imposed by statute upon a school board is to enforce the quarantine, and this it should do rigorously. In case the person quarantined was not of sufficient ability to provide food and the necessities of life and medical attendance the poor authorities should at once be notified and until notified the board make all needful provision for the family.²⁰

Conflicting opinions as to the liability of school district under act of 1899.

630. Judge Savidge said: "A school district is authorized to erect and furnish a hospital for the care of small-pox patients and provide the necessary supplies for the occupancy thereof and a doctor to attend the patients at a fixed salary. The directors of the poor are required to furnish medicine, food and provisions, including a nurse or nurses and a cook."²¹

Judge Lindsey holds that the legislature has provided a full and complete method or means to suppress contagious diseases and has provided for the health and sanitary regulations of the people not only in incorporated cities and boroughs, but in the rural districts. This system is complete in itself. The power vested in boards of health to quarantine families and to provide hospitals, necessarily implies the right to maintain and support those families during the period of quarantine and while they are in the control of

20. Brown vs. West Salem School Dist., 30 Pa. C. C. 124, 1904.

21. Coal Township School Directors, 2 Pa. J. L. R. 237, 1904.

the board of health. This system is complete and independent of the poor laws of the Commonwealth.²²

Liability of a borough for expenses incurred by the local board of health in employing a physician to vaccinate school children.
Opinion by Hampton L. Carson, Attorney General.

631. Samuel G. Dixon, M. D., Health Commissioner.
Sir: "I am in receipt of your letter of the 24th ult., referring to this department a communication from J. K. L. Mackey, Health Officer of the borough of Shippensburg, requesting an opinion as to the liability of the borough for payment of certain expenses incurred by the local Board of Health in employing a physician to vaccinate school children whose parents were too poor to pay, for which expenses the Council of said borough refuses to make appropriation.

"You ask me the question: Who is legally responsible for the payment of bills contracted by local Boards of Health for the protection of the health of the community, when the Council of the borough refuses to pay such bills or allow the board a sufficient appropriation to meet the obligations incurred? The facts relating to the communication of Mr. Mackey raise a question which is narrower than the one put in your letter of transmittal. Mr. Mackey's case is that of school children of poor parents, vaccinated by the physician of the Health Board of the borough by direction of the board. Your question would involve expenses of all kinds incurred in the protection of the public health, of which vaccination might be but a single item. It is necessary to discriminate between the action of local boards and the action of your department."

"The Act of May 11, 1893, P. L. 44, relates to the organization of Boards of Health in boroughs, and in Sections 2 and 3 prescribes the duties and powers of such boards. Substantially they are the same, *mutatis mutandis*, as those of Boards of Health in cities of the third class, under the Act of May 23, 1889, P. L. 306. It is provided that all fees, which shall be collected or received by the

22. In re Kibby Family, 2 Pa. J. L. R. 167, S. C. 12 D. R. 527, 1904.
Commonwealth vs. Guy, 13 D. R. 213, 1904.
Beaver County Commissioners, 14 D. R. 491, 1904.

board or any officer thereof in his official capacity, shall be paid over into the borough treasury monthly, together with all penalties which shall be recovered for the violation of any regulation of the board. Section 4 of the Act of 1893 defines the powers and duties of such boards with regard to infectious diseases, and, *inter alia*, empowers them 'to enforce vaccination.' The context leads me to the belief that these words do not mean compulsory vaccination in a general sense, but only under conditions of infection and contagion which render such enforcement necessary. Section 7 of the same act provides that 'it shall be the duty of the Board of Health to submit annually to the council before the commencement of the fiscal year an estimate of the probable receipts and expenditures of the board during the ensuing year, and the council shall then proceed to make such appropriation therefor as they shall deem necessary.' "

" Under provisions of this act it is within the discretion of the borough council to fix the amount of an appropriation of funds to meet the estimated annual expense account submitted by the Board of Health or make provision for payment of bills already contracted by said board. I am unable to find any other Act of Assembly which defines the extent of the discretionary power of council with regard to expenses contracted by Boards of Health, nor can I find any decision of the courts under this act. Neither do I find any act of assembly which in terms renders the borough liable for the expense of vaccinating school children whose parents are in indigent circumstances and unable to pay for the same, where the borough council neglects or refuses to appropriate the necessary funds to meet such expense."

" In my judgment, if it should be shown as a fact that a borough had received funds from fines and penalties which had not been appropriated to the support of the Health Board, and if it should be further shown that the Health Board had submitted an annual estimate of its probable receipts and expenditures, then it would become the duty of the councils to make an appropriation or at least show reasonable cause for not doing so. I do not believe that the Borough Council can arbitrarily refuse to make an appro-

priation or successfully shield itself behind the plea that the matter is entirely within its uncontrolled discretion. The duty of making an appropriation is quite clearly stated in the act, provided the reasonable means of information for the intelligent exercise of judgment have been previously supplied."

"The question can be raised by mandamus issued at the instance of the borough Board of Health through its solicitor, or if there be no regular solicitor, a solicitor specially authorized to act in this instance."

"Besides this, the matter could also be tested in an action of assumpsit by the doctor against the borough to recover the sum of money due him for services rendered at the instance of the Board of Health of the borough, relying upon the authority of the following cases: Allegheny County vs. Watt, 3 Pa. 462; Commonwealth vs. Harman, 4 Pa. 269; County of Northampton vs. Innes, 26 Pa. 156; County of Allegheny vs. Shaw, 34 Pa. 301."

"I am not advised how far the action of the Health Board in the borough of Shippensburg was caused by any action of yours, or whether you took any official action in the premises. The Act of April 27, 1905, P. L. 312, 'Creating a Department of Health and defining its powers and duties,' in Section 8 provides that 'it shall be the duty of the Commissioner of Health to protect the health of the people of the state and to determine and employ the most efficient means for the prevention and suppression of disease, etc.' In Section 17 of the same act it is provided that 'all necessary expenses under the provisions of this act, shall, after approval in writing by the Governor and the Commissioner of Health, be paid into the State Treasury upon the warrant of the Auditor General in the manner now provided by law.' If, from your knowledge of the facts, you can certify that the expense of vaccinating these school children in Shippensburg was a necessary expense under the provisions of the act just quoted, the local physician to whom the debt is due, can be paid without resorting to mandamus proceedings, but it will be unnecessary for me to point out to you the danger of allowing expenses,

which ought to be borne locally, to be paid out of the funds of the state."

"The Governor of this Commonwealth, on April 27, 1905, approved an act, P. L. 317, 'to establish an emergency fund to be used as occasion may require in the suppression of epidemics, prevention of disease, and protection of human life in time of epidemic diseases or of threatening disease, and making appropriation therefor.'" It is quite clear that the conditions contemplated by this act were those of such extraordinary danger to public health as to be beyond the ability of the local authorities to check or relieve. Unless the conditions contemplated by this act existed and were made manifest in the manner indicated in the act, I cannot advise you that the expenses of vaccination contracted by the Board of Health in the borough of Shippensburg, or in any other borough, are payable out of the emergency fund appropriated by the Act of April 27, 1905."

"Under the Act of 27th of April, 1905, P. L. 312, creating your department, and defining its powers, it is clear that the rules and regulations of your department may be promulgated by sending printed copies to all local Boards of Health, school boards, and clerks of councils of cities and boroughs, and the rules and regulations shall be printed in circular form and given to anyone who demands them. The 16th Section of this act provides that every person who violates any order or regulation of the Department of Health, or who resists or interferes with any officer or agent thereof in the performance of his duties, in accordance with the regulations and orders of the Department of Health, shall be deemed guilty of a misdemeanor, and shall, upon conviction thereof, be punished by a fine of not more than one hundred dollars or by imprisonment not exceeding one month or both at the discretion of the court."

School board should adopt rules.

632. When an infectious disease is prevalent within a school district, the school directors, acting as a Board of Health, have the authority to adopt rules and regulations to control the disease, to impose a penalty for the violation of those rules, and to maintain an action for the penalty ;

but though an action of assumpsit will lie, that action is in the nature of a summary conviction, and the record of such an action before a justice of the peace must show sufficient to give jurisdiction, and should disclose every fact essential to the issue: i. e., the nature of the rules or regulations, and the penalty for violation thereof, and especially the particular rule which was violated and the amount of the penalty.²³

Appointment of sanitary agent.

633. Judge White said :

“ The school board of West Wheatfield Township have presented their petition for the approval of their appointment of a sanitary agent to aid in enforcing the rules and regulations of the board. This application is made under the Act of April 11, 1899. This is the first application of the kind that has been made to this court. We find the recital, ‘ being notified and are aware of the typhoid fever in Garfield and vicinity in said township, and in our judgment deem it necessary that immediate steps be taken to have said town and vicinity put in proper sanitary condition,’ and thereupon appoint John W. Huston, as sanitary agent, to act in said township during the school term at a compensation of \$1.50 per day for the time actually employed. The act requires the court to consider the matter as follows : ‘ And if the said court, or judge thereof, shall approve the reasons given by the said board for the appointment of such sanitary agent, and shall also approve the compensation deemed proper therefor, said board shall have the authority to appoint such sanitary agent for such term as may be designated by the said court or judge thereof, the said compensation to be paid out of the school fund of the respective townships.’ We have nothing before us but the petition of the school board. We have no reason to doubt the accuracy of the statements and request of the school board. In all such applications we should regard the statements of the school board as prima facie correct, and, of course, their

23. Wayne Twp. School Directors vs. Rosencrans, 30 Pa. C. C. 9, 1904.

suggestions of the person and the compensation will be ordinarily accepted and approved by the court." ²⁴

Sanitary regulations of school or college buildings in cities.

634. Whereas, infectious and contagious diseases are very largely disseminated through the agency of the schools, from the want of proper disinfection of school buildings, the following act was passed.

School directors, trustees and others having control of school buildings to adopt method of disinfection.

635. On and after the passage of this act, it shall be the duty of the board of school directors, trustees, or other person or persons having control of any school or college building, in any city of this Commonwealth, to adopt and immediately put into operation a modern method and system of disinfection, for the disinfection of such school or college buildings. ²⁵

Duty to disinfect.

636. It shall further be the duty of such board of school directors, trustees, or other person or persons having control of any school or college building in any city of this Commonwealth, at regular intervals of not exceeding two weeks, to cause all of the school or college buildings under their control to be thoroughly disinfected, by means of the method and system which they may adopt in compliance with Section 1 of this act. ²⁶

Approval of method by board of health.

637. Whenever there exists in any city a local board of health for such city, the method and system of disinfection adopted by the board of school directors, trustees, or other person or persons having control of any school or college building in such city, shall be approved by such local board of health; in any city where no such local board of health exists, such method and system of disinfection, as aforesaid, shall be approved by the state board of health of this state. ²⁷

24. West Wheatfield Township, 10 D. R. 76, 1900.

25. Act April 14, 1903, Sec. 1, P. L. 172.

26. Act April 14, 1903, Sec. 2, P. L. 172.

27. Act April 14, 1903, Sec. 3, P. L. 172.

Not to interfere with school session.

638. In operating such methods and system of disinfection, as aforesaid, the person or persons in charge of such duty shall, as far as practicable, perform such duty in such manner as not to interfere with the regular school sessions held in said school or college buildings, and it shall not be necessary under this act, to perform such duty in any school or college building which is not used and occupied for school purposes.²⁸

Portion of appropriation for expenses.

639. In order to fully and completely carry out the provisions of this act, and to defray the expenses necessary to equip and put into operation by the board of school directors, trustees, or other person or persons having control of any public or high school of this state, such method and system of disinfection, as aforesaid, there shall be set aside by such school directors, trustees, or other person or persons having control of any public or high school building, out of the funds biannually appropriated by this state, under the act "providing method of distributing the appropriation to common schools," sufficient money, necessary to defray the expenses incident thereto.²⁹

Fine for neglect.

640. Any board of school directors, trustees, or other person or persons, charged under this act with the enforcement of any of its provisions, who shall neglect to properly enforce the same shall, upon complaint of state or local board of health to the court of common pleas of the proper county, pay a fine of not less than five dollars nor more than one hundred dollars.³⁰

28. Act April 14, 1903, Sec. 4, P. L. 172.

29. Act April 14, 1903, Sec. 5, P. L. 172.

30. Act April 14, 1903, Sec. 6, P. L. 172.

CHAPTER XXVI.

TEACHERS' INSTITUTES.

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Teachers' county institute. Organization.

641. The county superintendent of each county in this Commonwealth is hereby authorized and required, once in each year, at such time and place as he, or a properly authorized committee of teachers, acting with him, may deem most convenient, to call upon and invite the teachers of the common schools, and other institutions of learning, in his county, to assemble together, and organize themselves into a teachers' institute, to be devoted to the improvement of teachers in the science and art of education, and to continue in session at least five days, including a half day for going to, and a half day for returning from, the place of meeting; said institute to be presided over by the county superintendent, or by some one designated by him, and subject, in its general management, to his control.¹

Report of county superintendent on attendance.

642. Each county superintendent, upon the assembling of the teachers' institute of his county, shall cause a roll of members to be prepared, which roll shall be called at least twice every day, during the session of the institute, and all absentees carefully marked, and from which, upon the adjournment of the institute, he shall ascertain the exact num-

1. Act April 9, 1867, Sec. 2, P. L. 51.

ber of teachers who were in attendance and the length of time each attended.²

Contribution from county treasurer to county institute.

643. And upon the presentation of a certificate, at the close of the session of each annual institute, setting forth these facts (as set forth in Section 642), and signed by the county superintendent, to the treasurer of the proper county, he is hereby authorized and required to pay immediately, out of any money in the county treasury not otherwise appropriated, to the county superintendent, one dollar for every three days spent by teachers of the county in attendance at the institute, for that year, or as much of it as may be needed ; such money to be expended by the county superintendent in procuring the services of lecturers and instructors for the institute, and in providing the necessary apparatus, books and stationery, for carrying on its work : Provided, That the amount which may be drawn from the county treasury shall, in no case, be more than two hundred dollars, but may, in all cases, be sixty dollars, if it shall appear, from the vouchers presented by the county superintendent to the county auditors, as required by the 4th section of this act (see *Infra* 'TEACHERS' INSTITUTES, Sec. 649), that this sum has been actually expended for the purposes herein specified.³

Penalty of teachers for non-attendance.

644. Any teacher who absents himself from the institute of his county, without a good reason, may have his want of professional spirit and zeal indicated, by a lower mark on his certificate in the practice of teaching, than he would otherwise have received.⁴

Teacher's compensation for attending institute.

645. All boards of school directors and boards of controllers shall be and are hereby authorized and required to pay the teachers employed in the public schools, of the several districts, within their jurisdiction, for attendance upon

2. Act April 9, 1867, Sec. 3, P. L. 51.

3. Act April 9, 1867, Sec. 3 P. L. 51.

4. Act April 9, 1867, Sec. 3, P. L. 51.

the sessions of the annual county institutes, in the respective counties.⁵

School district liable for teacher's compensation.

646. Compensation for institute attendance shall be based on the official reports made, to the several boards of directors or controllers, by the proper county, city or borough superintendent, who shall report the daily attendance of teachers to the respective boards by which they are employed, and such compensation shall be allowed by the directors or controllers, and paid by the district treasurer to the teachers entitled to receive the same.⁶

Compensation not to exceed two dollars per diem.

647. Compensation, as herein authorized, shall not be less than the per diem pay for actual teaching; Provided, That it shall not, in any case, exceed two dollars per diem, and shall be allowed and paid to the teachers in their respective districts for each day's attendance reported as aforesaid by the proper superintendent.⁷

Pay of teachers while attending institute under act of 1887.

648. Attorney-General Kirkpatrick said :

"The practical construction of this act of assembly, as made by the department of public instruction, is, that teachers are entitled to compensation for institute attendance, in addition to their regular wages, according to their per diem pay for actual teaching, but compensation as authorized by the act of assembly cannot lawfully exceed two dollars a day, which is the maximum allowance provided by the act. The time of attendance cannot be reported and credited as part of the twenty days' actual teaching required to constitute a school month, but is in addition thereto.

Teachers in attendance who are, at the time of holding the institute, engaged in teaching in the county, and also those who have been elected or employed to teach in the public schools of the county for the current annual term,

5. Act April 13, 1887, Sec. 1, P. L. 20.

6. Act April 13, 1887, Sec. 2, P. L. 20.

7. Act April 13, 1887, Sec. 3, P. L. 20.

prior to the date of the institute—but whose schools are opened subsequently—are to be reported by the superintendent, and credited as legal members of the institute, and are entitled to compensation for attending the same.

In my opinion this construction accords with the true intent of the act of assembly in question.”⁸

Institute accounts.

649. Each county superintendent who may draw money from the county treasury, for the purposes named in this act, shall file his account of all expenditures, under the act, in the office of the county treasurer, with vouchers for the same, which shall be examined by the auditors of the county, in like manner, as other county expenditures; and any misapplication of funds shall be punished in the same manner as collectors of state and county taxes, for like offenses, are now punished.⁹

Superintendent's report on adjournment to the superintendent of common schools.

650. All county superintendents, upon the adjournment of the teachers' institutes, held in their respective counties, are hereby required to report to the superintendent of common schools, the number of teachers in attendance, the names of the lecturers or instructors who officiated, the subjects upon which the instruction was given, and the degree of popular interest awakened by the proceedings.¹⁰

Superintendent's report to school directors.

651. At the close of the annual sessions of the said institutes, it shall be the duty of the several county, city and borough superintendents to make a report, to each board of school directors in their respective jurisdictions, setting forth the number of days that each teacher shall have attended and participated in the exercises of the said annual teachers' institute, which said report shall be the basis for allowing the teachers their time and wages: Provided,

8. Teachers' Institute, 6 Pa. C. C. 24, 1888.

9. Act April 9, 1867, Sec. 4, P. L. 51.

10. Act April 9, 1867, Sec. 5, P. L. 51.

That the provisions of this act shall not extend to the first school district of Pennsylvania, nor to the counties wherein special laws regulating or relating to county institutes are in force.¹¹

City and borough teachers' institute.

652. That it shall be lawful for the board of school directors or controllers of any city or borough which has elected a superintendent and employs not less than fifty teachers, by resolution at any stated meeting and duly recorded, to authorize the holding of a separate annual teachers' institute for said city or borough, and in all matters pertaining to the holding of institutes shall be in no wise subject to the authority and jurisdiction of the superintendent of the schools of the county in which said city or borough is located.¹²

City or borough superintendent may call a teachers' institute.

653. When the holding of said separate annual institute shall have been so authorized as aforesaid, the superintendent of the schools of said city or borough shall have power to call a teachers' institute and to draw from the county treasury money for the support of the same in like manner and to the same extent as to the county superintendents of this Commonwealth are now empowered to do.¹³

Committee on permanent certificates.

654. The said annual institutes shall have power to elect a committee on permanent certificates in and for said city or borough as county institutes are now empowered to do for their respective counties.¹⁴

Time for holding city teachers' institute.

655. City teachers' institute may be held, throughout the school year, on any five days, or any ten half days which the city superintendent of schools may select for this purpose.¹⁵

11. Act June 7, 1881, Sec. 2, P. L. 50.

12. Act June 28, 1895, Sec. 9, P. L. 415

13. Act June 28, 1895, Sec. 9, P. L. 415.

14. Act June 28, 1895, Sec. P. L. 415.

15. Act April 20, 1905, Sec. 1, P. L. 228.

CHAPTER XXVII.

TEXT BOOKS AND SCHOOL SUPPLIES

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Series of school books, when and how selected.

656. Immediately after the annual election of teachers in each school district of the state, and before the opening of the schools for the ensuing term, there shall be a meeting of the directors or controllers and teachers of each district ; at which meeting the directors and controllers shall select and decide upon a series of school books, in the different branches to be taught during the ensuing school year ; which books, and no other, shall be used in the schools of the district during said period.¹

Books for blind children.

657. That the school boards of this Commonwealth are hereby authorized and recommended to provide suitable books and apparatus for the instruction of indigent blind children between the ages of nine and thirteen years, and pay for the same out of the school fund as in the case of seeing children, the cost thereof not to exceed twelve dollars for each person in any one year.²

1. Act May 8, 1854, Sec. 25, P. L. 617.

2. Act May 8, 1876, Sec. 1. P. L. 138.

Legal requirements to purchase text books.

658. To make the action of the directors in the selection of books effective and legal, there must be a record of such action, and the statute plainly declares what the record shall contain—the names of the members voting in the affirmative and those voting in the negative—so that it shall appear that a majority of the whole number of directors voted affirmatively, and who so voted as well as those who voted in the negative. This must be done before the books are purchased or introduced into the schools, and before the commencement of the ensuing term, as the act of May 8, 1854, declares that the books shall be selected at a meeting of the directors and teachers before the opening of the schools of the ensuing term, “which books, and no others, shall be used in the schools of the district during said period.”

The record of the votes upon the minutes is of substance, and, until this appears, the act of the board in the adoption of text books is of no validity, and the minutes cannot be corrected at a meeting subsequent to the opening of the schools.³

Meeting of teachers.

659. The joint meeting of directors and teachers is mandatory and not merely directory. If no action is taken at the joint meeting of directors and teachers, the directors cannot subsequently at a regular meeting of the board, where no teachers were present or invited to be present, adopt a change of text books.⁴

Time of holding joint meeting of teachers and directors.

660. The act of May 8, 1854, should not be so strictly construed that the meeting of the directors and teachers must be held without any intervening time after the annual election, though such is a popular meaning, and the definition of lexicographers, of the word “immediately.” What we mean is that a meeting upon due notice, in a reasonable time after the election of teachers, and before the

3. Barber vs. Wilhelm, 7 Pa. C. C. 214, 1889.

4. Barber vs. Newbaker, 19 Pa. C. C. 664, 1897.

commencement of the ensuing term, would be legal. The teachers may or may not be present at the annual election, and, if not present, could not attend a meeting immediately, of which they had no notice.

The law directs a meeting of the directors and teachers, and though the selection and adoption of books to be used in the schools is the province of the directors, yet the teachers are required to be present, or have such notice thereof, that they can attend.⁵

Notice to teachers.

661. The statute does not expressly declare that the teachers shall be notified of the meeting, but it undoubtedly contemplates notice of some kind, although we do not think it need be in writing. Notice by publication in a newspaper of general circulation, without proof that it was taken by the teachers, would not be sufficient to warrant the directors in proceeding to select the text books.⁶

Notice and meeting of directors.

662. Every member of the school board is entitled to know the time of meeting for the contracting of text books. If no notice has been given, any contract which the board might make will be void. The courts holding that the kind and number of the books and the prices to be paid for them are matters requiring deliberation, consultation and judgment and are for the consideration of the whole board.⁷

Object of teachers meeting with board.

663. The duties and powers of the teachers at a meeting with the directors for the adoption of text books is purely advisory, hence, if after consulting and advising with them, and receiving their views in writing, the directors adjourn until a later hour in the same day before taking a final and decisive vote, the irregularity is not fatal, there being no evidence of secrecy or fraud.⁸

5. Barber vs. Wilhelm, 7 Pa. C. C. 214, 1890.

Maloney vs. Rogers et al., 6 Kulp 289, 1891.

6. Maloney vs. Rogers, et al., 6 Kulp 289, 1891.

7. Mitchell vs. Kearns, 16 Pa. Superior Ct. 357, 1901.

8. Maloney vs. Rogers, et al., 6 Kulp 289, 1891.

Purchase of text books and supplies.

664. School directors or controllers shall purchase text books and other necessary school supplies for use in the public schools of their respective school districts, out of the school fund of the district, and when so procured the necessary books and school supplies shall be furnished free of cost for use in the schools of said district, subject to the orders of the directors or controllers thereof, whose duty it shall be to provide for the return of and for the safe keeping and care of the books which shall be returned at the close of the annual school term in each year or as the board may direct.⁹

Use of text books during vacation.

665. The board shall allow each child who wishes to attend a pay or select school, any time during vacation, between regular school terms, the use of the books furnished him or her for that purpose: Provided further, That the teacher of said school or schools shall possess a valid certificate issued by a superintendent of public schools: Provided however, That the school directors or controllers shall make such regulations for the care and return of said books as they may deem necessary, and it shall be their duty to see that said books shall be used only when the pay school is held in city, borough or district school house.¹⁰

Change of text books.

666. The board of directors of any district, the controllers in cities and boroughs, or any school superintendent, shall not order or direct or make any change in the school books or series of text books used in any school under his or their superintendence, direction or control, more than once in every period of three years; and any laws or parts of laws inconsistent herewith be and the same are hereby repealed.¹¹

Penalty.

667. Any school director, controller or superintendent, who shall violate the provisions of this act, shall be deemed

9. Act June 7, 1897, Sec. 1, P. L. 130, an amendment to Sec. 1 of Act June 25, 1885, P. L. 173.

10. Act June 7, 1897, Sec. 1, P. L. 130.

11. Act May 26, 1871, Sec. 1, P. L. 280.

guilty of a misdemeanor, and upon conviction thereof shall be sentenced by the court to pay a fine, not exceeding two hundred dollars, and that he be deprived of his office.¹²

Change of text books restricted in certain cities.

668. That hereafter the board of directors, controller or superintendent of any school district, in cities of the second and third class, shall not order or direct, or make any change, by resolution or otherwise, in the school books or series of text books in use in any public school under his or their control, superintendence or direction, more than once in every six years ; and all such school books or series of text books which shall be adopted or in use in the several schools of cities of the second and third class in this Commonwealth on the first Monday of October next, shall be continued in use by the board of directors or others having control of said schools, for and during the term of six years from that date, and thereafter shall not be changed in whole or part more than once in every six years.¹³

Price lists of books to be furnished and adopted.

669. That before the adoption of any series of text books by the central board of education, or board of control, or department of education, it shall be the duty of the author, publisher or regular constituted agent offering any books for adoption, to furnish the price of each and every book, which shall be the price so long as said book or books remain in use in the school ; and it shall be the duty of the central board of education to adopt said price list, and require of said author, publisher or agent such security as in their judgment is proper for the performance of their contract.¹⁴

Awarding of contracts.

670. It shall be the duty of the several school boards, after having advertised for proposals at least twice a week for four weeks in two papers having the largest circulation in the city or county, to award the contract to the lowest

12. Act May 26, 1871, Sec. 2, P. L. 280.

13. Act May 3, 1878, Sec. 1, P. L. 44.

14. Act May 3, 1878, Sec. 2, P. L. 44.

and best bidders, and when entering into contract for said books they shall specify the style of paper, printing and binding ; and the agents or publishers, shall, before acceptance of their bids, furnish samples of the same, which shall be of the most durable and serviceable quality for school purposes, and bonds shall be given guaranteeing that all books furnished shall be equal in paper, print and binding to the samples first shown.¹⁵

Penalty for violation of act. Act to be accepted.

671. Any school director, controller or superintendent who shall violate the provisions of this act, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be sentenced by the court to pay a fine not exceeding five hundred dollars and that he or she be deprived of his or her office. Provided, That the provisions of this act shall not become a law in any school district, unless accepted by a majority of the directors elected in such district.¹⁶ All acts or parts of acts inconsistent with this act be and the same are hereby repealed.

Restraining purchase of school books.

672. The directors will be restrained from purchasing new books where it is shown that a report of a committee on books recommending the adoption of new books was "adopted" by the board of controllers by a motion duly passed.¹⁷

And they will be restrained from changing books where there has not been an affirmative vote of a majority of the board, and the three years have not passed since the last series of books was adopted.¹⁸

15. Act May 3, 1878, Sec. 3, P. L. 44.

16. Act May 3, 1878, Sec. 4, P. L. 44.

17. Heckman vs. Board of Controllers, 51 P. L. J. 81, 1903.

18. Shannon vs. School Directors, 10 Kulp 544, 1903.

Wharton vs. School Directors, 42 Pa. 358, 1862.

Butts vs. Howley, 5 Kulp 338, 1889.

Mitchell vs. Kearns, 16 Pa. Superior Ct. 357, 1901.

Roth vs. Marshall, 158 Pa. 272, 1893.

Krickbaum vs. School Directors, 3 Kulp 30, 1880.

Directors have no power to adopt more than one series of text books covering the same studies.¹⁹

After a selection of text books has been made, school directors or controllers cannot within three years at a subsequent meeting reconsider such selection, and make a new one of different books.²⁰

Who cannot act as agents for the sale of school books.

673. It shall not be lawful for the county superintendents, directors or controllers, or any other person officially connected with the common school system, to become agents for the sale, or in any way to promote the sale of any school books, maps, charts, school apparatus or stationary, or to receive compensation for such sale, or promotion of sale, in any manner whatsoever; and any violation of the provisions of this section shall be deemed a misdemeanor, and punishable with a fine or imprisonment.²¹

No pecuniary interest.

674. It shall not be lawful for any director, or president of any school board, in this Commonwealth, to be interested in the furnishing of books, or any other supplies, for said school.²²

Separate accounts.

675. The board shall keep an account of all moneys, expended under the above section,²³ and report it under separate item in the annual financial accounts as authorized by law.²⁴

19. Francis vs. School District, 41 P. L. J. 19, 1893.

20. Price vs. Scranton School Controllers, 1 Lack. Bar. 47, 1878.

21. Act May 8, 1854, Sec. 26, P. L. 617.

22. Act May 11, 1862, Sec. 17, P. L. 475.

23. See *Supra* Sec. 664.

24. Act June 25, 1885, Sec. 2, P. L. 173.

CHAPTER XXVIII.

CITY AND BOROUGH SUPERINTENDENTS AND SUPERVISING PRINCIPALS.

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Cities and boroughs having certain population may elect superintendent.

676. The school directors of any city, borough, or township, in this Commonwealth having a population of over five thousand inhabitants, may on the first Tuesday of May, one thousand eight hundred and sixty-nine, and every third year thereafter, elect, viva voce by a majority of the whole number of directors present, one person of literary and scientific acquirements and skill and experience in the art of teaching, as city, borough or township superintendent, for the three succeeding school years, and the said school directors shall determine the amount of compensation for said city or borough superintendent, which compensation shall be paid by the same officers as pay the salaries of teachers in such school district, and in the same manner as such salaries are now paid : Provided, that nothing in this act shall prevent the directors of any city or borough from electing a superintendent to serve from the time of election until the commencement of the school year, one thousand eight hundred and sixty-nine, from filling a vacancy, should any occur, for the unexpired term of said office, nor from increasing the salary of a superintendent, at any time : Provided also, That the president of the board of directors or controllers of any city or borough in this Commonwealth shall, at any time after the passage of this act, if so requested, in writing by seven directors or controllers, call a convention, giving at least five days' notice thereof, of all the directors of said city or borough, to determine whether they will elect a city or

borough superintendent, in accordance with the provisions of this act; and if, at such meeting, it shall be decided to hold such an election, the said directors shall again convene at the time appointed by this section of this act, or any time, in accordance with its provisions, and at a place fixed upon by themselves, when they shall proceed to carry their determination into effect in the same manner as is done by conventions held for the election of county superintendents; and all subsequent conventions for carrying into effect the purposes of this act shall be called in the same manner by said president of the board of directors or controllers of such city or borough.¹

Certificate of election. Commission.

677. It shall be the duty of the president and secretary of the meeting of the directors, of any city or borough, at which a city or borough superintendent has been elected, to certify to the superintendent of common schools, the name and address of the person elected city or borough superintendent, in pursuance of the provisions of this act, and those of all other candidates who received votes, together with the amount of compensation fixed upon by said directors; upon the receipt of such certificate, if no valid objection be received within thirty days after the day of election, the superintendent of common schools shall commission the person so elected for the term for which he was elected; but if objections to issuing such commission be made within thirty days, the superintendent of common schools shall proceed with like power and like manner as he is now required to do where objections are made against issuing commissions to persons claiming to be elected county superintendent.²

Duties of superintendents.

678. It shall be the duty for all city or borough superintendents, to take a similar oath or affirmation to that now required of county superintendents, to perform, within the limits of their several jurisdictions, all the duties now by law

1. Act April 9, 1867, Sec. 7, P. L. 51, as amended by Act May 7, 1885, Sec. 1, P. L. 15.

2. Act April 9, 1867, Sec. 8, P. L. 51.

enjoined upon county superintendents, and to discharge such other duties as the by-laws, rules and regulations of the respective boards of directors may require.³

Make annual report and attend meetings.

679. It shall be their further duty, in addition to an annual report, to report monthly to the department of common schools, such facts relating to their work and the condition of the schools under their charge as may be required by the superintendent of common schools, and to attend meetings of superintendents called by said superintendent of common schools.

Supervising principals of schools in townships of over 4,000 inhabitants.

680. The school directors of any township in this Commonwealth having a population of over four thousand inhabitants may, at the time of the annual election of teachers, elect viva voce, by a majority of the whole number of directors, one person, holding a permanent certificate or a diploma issued by a state normal school of this Commonwealth, as supervising principal of public schools of said township, or may employ one of the teachers of such township, having said qualifications, to perform the duties of supervising principal, for a term not exceeding three years, at a salary to be fixed by the school board at the time such supervising principal shall be elected or employed.⁵

Duties of principal.

681. Such supervising principal, when elected, shall discharge such duties as the county superintendent of public schools and the board of directors by whom he was employed may require, and shall be removed from office in the same manner and for the same causes as teachers in the public schools may be removed.⁶

City or borough superintendent not subject to authority of county superintendent.

682. From and after the appointment of a city or borough superintendent in any city or borough in this Com-

3. Act April 9, 1867, Sec. 10, P. L. 51.

4. Act April 9, 1867, Sec. 10, P. L. 51.

5. Act June 25, 1901, Sec. 1, P. L. 598.

6. Act June 25, 1901, Sec. 2, P. L. 598.

monwealth and the proper notification of the superintendent of common schools of the fact, such city or borough shall not be subject to the authority and jurisdiction of the county superintendent of the county in which said city or borough is located, except that in the matter of holding the annual teachers' institute as provided by sections second,⁷ third,⁸ fourth,⁹ fifth¹⁰ of this act, in which the city or borough superintendent shall co-operate ; and the quota of the annual appropriation to said city or borough shall not be diminished by reason of any contribution to the salaries of the county superintendents, nor shall the directors of such city or borough vote at any election for county superintendent ; Provided, That it shall be lawful for the board of school directors or controllers of any city or borough which has elected a superintendent and employs not less than fifty teachers, by resolution at any stated meeting and duly recorded, to authorize the holding of a separate annual teachers' institute for said city or borough, and in all matters pertaining to the holding of institutes shall be in no wise subject to the authority and jurisdiction of the superintendent of the schools of the county in which said city or borough is located ; and when the holding of said separate annual institute shall have been so authorized as aforesaid, the superintendent of the schools of the said city or borough shall have power to call a teachers' institute and to draw from the county treasury money for the support of the same in like manner and to the same extent as the county superintendents of this Commonwealth are now empowered to do ; and the said annual institute shall have power to elect a committee on permanent certificates in and for said city or borough as county institutes are now empowered to do for their respective counties. All acts or parts of acts inconsistent herewith be and the same are hereby repealed.¹¹

7. See *Supra* TEACHERS' INSTITUTES, Sec. 641.

8. See *Supra* TEACHERS' INSTITUTES, Secs. 642, 643, 644.

9. See *Supra* TEACHERS' INSTITUTES, Sec. 649.

10. See *Supra* TEACHERS' INSTITUTES, Sec. 650.

11. Act June 28, 1895, Sec. 9, P. L. 415. The act amends Sec. 9 of the Act of May 24, 1887, P. L. 196, which amended Sec. 9 of the Act of April 9, 1867, P. L. 53.

CHAPTER XXIX.

COUNTY SUPERINTENDENT.

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Creation of office.

683. The office of county superintendent was created by act May 8, 1854.

Election of county superintendent.

684. The school directors of the several counties of the Commonwealth, shall meet in convention at the seat of justice of the proper county, on the first Tuesday of May, in each third year, and select, viva voce, by a majority of the whole number of directors present, one person, of literary and scientific acquirements, and of skill and experience in the art of teaching, as county superintendent for three succeeding school years.¹

Majority of whole number present necessary to an election.

685. Where the president and secretary of the convention certified to J. P. Wickersham, superintendent of common schools, inter alia, "that the whole number of directors was 112, of whom 56 voted for Geo. Swartz and that D. E. Kast received 55 votes, one member refusing to vote at all on the last ballot," the superintendent refused to issue a commission to Swartz for the reason that the certificate was not such as the law required.

On appeal to the Supreme Court, Justice Sharswood said: "The thirty-ninth section of the act expressly provides that the selection shall be viva voce by a majority of the whole number of directors present." It is urged that the director refusing to vote was virtually absent. He might perhaps, have withdrawn, but he did not do so. He remained, and being present was entitled to be counted. It matters not what he supposed to be the effect of his action. The legal intendment was that he voted for neither or for the minority candidate. It would be dangerous to fritter away the express provision of the statute by construing an actual presence into virtual absence. The certificate then was a nullity: it was a *felo de se*.²

Oath of office.

686. Every person selected or appointed county superintendent of common schools shall, before entering upon the duties of his office, take an oath or affirmation, before any judge of the court of common pleas of the proper

1. Act May 8, 1854, Sec. 39, P. L. 617, as amended by Act May 27, 1866, P. L. 88.

2. Commonwealth vs. Wickersham, 66 Pa. 134, 1870.

county, or before the superintendent of common schools, who is hereby authorized to administer the same, that he will perform all the duties of county superintendent, during his term of office, honestly, impartially, diligently and according to law, to the best of his skill and ability, which said oath or affirmation, being subscribed by said county superintendent, and attested by said judge or state superintendent, shall be filed in the department of common schools.³

Notice of election for county superintendent.

687. It shall be the duty of the superintendent of common schools, by publication at least three successive weeks, in two newspapers for each county, if so many there be, but if none are published in such county, then by printed notices, sent by mail to the secretary of each board of directors of each school district in such county, of the time and place for holding the triennial convention of directors, who shall then and there assemble, and select a presiding officer from one of their number, and the directors then present shall proceed to the election of a county superintendent in the manner hereinafter provided. The notice that shall hereafter be given of the assembling of the aforesaid triennial convention, shall be by the county superintendent, in the manner above provided. All expenses of giving notices, directed by this section, shall be paid out of the same funds as the salary of the county superintendent.⁴

Duty of president and secretary of convention.

688. It shall be the duty of the president and secretary of the triennial convention of directors, to certify to the superintendent of common schools, the name and post-office address of the person elected county superintendent, in pursuance of the provisions of the act of May 8, 1854, and those of all the other candidates who received votes, together with the amount of compensation fixed upon by said convention; upon the receipt of such certificate, if no valid objection be received with thirty days, after the day of the election, the superintendent of common schools shall com-

3. Act April 11, 1862, Sec. 14, P. L. 471.

4. Act May 8, 1854, Sec. 43, P. L. 617.

mission the person so elected, for the term of three years.⁵

Contested elections.

689 The act further provides that if objections to issuing such a commission be made within thirty days, and such objections be signed, among others, by a majority of the members of not less than one-fifth of all the school boards in the county, from which such objections are received, and certified to, under oath or affirmation, by at least three of the signers, the superintendent of common schools may require such evidence, under oath or affirmation, in regard to the legality of the election and the qualifications of the person, elected county superintendent, as he shall deem necessary, and then shall issue the commission to the person properly qualified, who received the greatest number of votes ; and the superintendent of common schools, when engaged in the investigations of objections, filed against the issuing of commissions to county superintendents, shall have power to issue subpoenas, and administer oaths, and any person, refusing or neglecting to attend and give evidence at such investigation, when legally subpoenaed, shall be liable to the same fines and penalties, as if he had refused to appear and give evidence in a court of record, and the costs to be paid by the party subpoenaing the witnesses.⁶

To what objections must be made.

690. The objections must either relate to the legality and validity of the election, or to the qualifications of the candidate. Objections grounded on the disqualification of the person selected, are 1, want of residence ; 2, want of moral character ; 3, want of physical ability to discharge the duties of the office ; 4, want of learning, and, 5, want of professional skill.⁷

Salary of county superintendents.

691. The salary of each county superintendent of common schools shall be ten dollars for each of the first one

5. Act April 17, 1865, Sec. 4, P. L. 62.

6. Act April 17, 1865, Sec. 4, P. L. 62.

7. School Laws and Decisions, page 248, 1903.

hundred schools within his jurisdiction, five dollars for each school above one hundred and not over two hundred, and two dollars each for each school above two hundred : Provided, That the salary of a county superintendent shall in no case be less than one thousand dollars per annum, nor more than two thousand dollars per annum : And provided further, That in all counties having twelve hundred square miles of territory, or a school term exceeding seven and one-half months, the salaries of said superintendents shall not be less than fifteen hundred dollars : And provided further, That a convention of school directors, assembled for the purpose of electing a county superintendent, may vote him a salary greater than the amount he would receive by this act, such increase to be in all cases taken out of the school fund appropriated for the county thus voting.⁸

How paid.

692. The salary of the county superintendent shall be paid by the superintendent of common schools, by his warrant drawn upon the state treasurer, in half-yearly installments if desired.⁹

Vacancies. How filled.

693. All the vacancies in the office of county superintendent shall be filled by the appointment of the superintendent of common schools, until the next triennial convention of directors ; when any existing vacancies shall be filled by election in the usual manner, for the full term of three years.¹⁰

Qualifications of county superintendent.

694. No person shall hereafter be eligible to the office of county, city or borough superintendent, in any county of this Commonwealth, who does not possess a diploma from a college, legally empowered to grant literary degrees ; a diploma or state certificate, issued, according to law, by the authorities of a state normal school ; a professional certifi-

8. Act May 17, 1901, P. L. 262.

9. Act May 8, 1854, Sec. 39, P. L. 617.

10. Act May 8, 1854, Sec. 4, P. L. 617

cate from a county, city or borough superintendent of good standing, issued at least one year prior to the election, or a certificate of competency from the state superintendent of common schools ; nor shall such person be eligible, unless he has a sound moral character, and has had successful experience in teaching, within three years of the time of his election.¹¹

Test of qualification.

695. The same act further provides, that serving as county, city or borough superintendent, shall be deemed a sufficient test of qualification ; and the president and secretary of each convention of school directors, held in any county, city or borough, to elect a county, city or borough superintendent, when certifying to the superintendent of common schools, the name and address of the person elected county, city or borough superintendent, shall, at the same time, state the kind and character of the evidence, upon which said convention relied, for proof of the eligibility of the person so elected ; and the said superintendent of common schools, if, upon the examination of the evidence presented, it shall prove to be such as is required by this act, and no objection made, in accordance with Section 4 of the act, approved April 17, Anno Domini 1865, shall issue a commission to the person elected as aforesaid, as now required by law ; but if, upon examination of said evidence of competency it shall not prove to be such as is required by this act, or if objection be made, in accordance with said section of the act, approved April 17, Anno Domini 1865, the said superintendent of common schools shall appoint two competent persons, himself being the third, to examine the person so elected county, city or borough superintendent, and if, upon examination, he be found duly qualified for the office, the said superintendent of common schools shall issue to him the usual commission ; but if not, the said superintendent of common schools shall proceed, in like manner, in respect to the person receiving the next highest number of votes in the convention of directors, who, if

11. Act April 9, 1867, Sec. 13, P. L. 51.

found qualified, shall receive the commission aforesaid, as county, city or borough superintendent; but if his qualifications are also found insufficient, the said superintendent of common schools shall appoint, with the advice and consent of the governor of the Commonwealth, some other person, with the required qualifications, county, city or borough superintendent for the ensuing term of such office.¹²

Serving as county, city or borough superintendent not an absolute test.

696. In this case A. was duly elected, commissioned and served as the county superintendent of schools of Wayne county, and borough superintendent of common schools for Hyde Park in Lackawanna County; that being thus qualified he was on June 29, 1878, elected city superintendent of common schools of the city of Scranton, for the term of three years. A return of said election was made to Wickersham, superintendent of public instruction, whose duty it became, within thirty days, to issue a commission to A. provided no objections had been received or made. In this case objections were filed to the issuing of the commission, signed by eight citizens and taxpayers of the city of Scranton, alleging that A. did not possess the literary and scientific requirements demanded by the common school law of the state and that he did not possess a sound moral character, such as is contemplated in the act of assembly and as is imperatively demanded by public opinion and the high officer in question.

The superintendent of public instruction then proceeded under Section 13 of the act of April 9, 1867, P. L. 51, "to appoint two competent persons, himself the third, to examine the person so elected county, city or borough superintendent." After an examination the committee reported that they believed that A. did not possess the literary qualifications specified by law, and which are required for the successful discharge of the duties of the office to which he has been elected. No commission was issued and on appeal, the Supreme Court said that it is clear that it is

12. Act April 9, 1867, Sec. 13, P. L. 51.

only where no objections are interposed, that serving as county, city or borough superintendent of public schools shall be deemed a sufficient test of qualification. Such service may have shown that the candidate was entirely disqualified.¹³

Superintendent of public instruction required to issue a commission to teachers who hold a professional certificate, when elected as county, city or borough superintendent.

697. In reply to an application by the superintendent of public instruction for advice in issuing commissions to teachers elected as superintendents, Attorney-General Hensel said : " I am in receipt of your communication of May 27, inquiring whether you can legally withhold the commission from the duly elected superintendent of schools in Shenandoah borough, who holds a professional certificate, because certain branches taught in the schools of that borough are not included among those upon his certificate ; and whether the law requires of any superintendent of schools qualifications beyond those expressed in a valid professional certificate.

Section 13 of the act of April 9, 1867, provides that ' No person shall hereafter be eligible to the office of county, city or borough superintendent, in any county of this Commonwealth, who does not possess a diploma from a college legally empowered to grant literary degrees, a diploma or state certificate issued according to law by the authorities of a state normal school, or professional certificate from a county, city or borough superintendent of good standing.' ' Nor shall such person be eligible unless he has a sound moral character, and has had successful experience in teaching within three years of the time of his election.' Your communication states that, in the case to which it relates, the election was due and legal ; that the person elected holds a professional certificate which, I assume, has been duly issued, and it is to be presumed that he has a sound moral character, and has had successful experience in teaching within three years of the time of his election. These fill the full measure of the legal require-

13. Commonwealth vs. Wickersham, 90 Pa. 311, 1879.

ments. There is no provision of law requiring of any superintendent of schools qualifications beyond those expressed in a valid professional certificate, nor is there any specification that such certificate must include all the branches taught in the schools of the borough, city or county, to which he has been elected superintendent.¹⁴

Eligibility of county, city or borough superintendent.

698. The opinion to Hon. Nathan C. Schaeffer, state superintendent of public instruction by Deputy Attorney-General Fleitz, was as follows: "I have before me your letter of recent date, enclosing the certificate of election of A. as superintendent of the public schools of the city of Johnstown, as well as a petition signed by a number of the school directors of said city, protesting against the issuing of a commission by you to the said A., and alleging that he is ineligible under the law, for the reason that he has not taught in the public schools of the state within the past three years. It appears, however, from the papers in the case, that A. has taught successfully at Lafayette college, situated at Easton, and the University of Pennsylvania, at Philadelphia, during his time.

In response to your request for an official opinion as to whether or not you can legally issue a commission to A. as the duly elected superintendent of schools in Johnstown, I beg to submit the following: Section 13 of the act of April 9, 1867, P. L. 51, provides that 'no person shall hereafter be eligible to the office of county, city or borough superintendent in any county of this Commonwealth, who does not possess a diploma from a college legally empowered to grant literary degrees, a diploma or state certificate issued according to law by the authorities of a state normal school, a professional certificate from a county, city or borough superintendent of good standing Nor shall any such person be eligible unless he has a sound moral character, and has had successful experience in teaching within three years of the time of his election.'

14. Borough School Superintendent, 13 Pa. C. C. 458, 1893.

There is nothing in your communication or the papers before me to show that the election of A. was not due and legal in every respect. The certificate of election, signed by the president and secretary of the board, complies with the requirements of the law in every particular, and it is to be presumed, in the absence of proof to the contrary, that the full measure of the legal requirements has been filled. The language of the act above quoted by no means bears out the contention that the teaching required during the three years prior to election should be done in the public or common schools of the state ; indeed, it would be a manifest absurdity to insist that a person qualified to teach successfully in the higher institutions of learning should be excluded from holding the position of superintendent of public schools, while a teacher in the common schools would be eligible. The intent of the act was clearly to provide that only persons of experience in teaching should be eligible to superintend those engaged therein. There is nothing whatever in this case which would indicate that, even technically, A. is not entitled to his commission.

I therefore advise and instruct you that upon the facts submitted to me, it is your duty to issue the commission."¹⁵

Branches to be taught.

699. It shall be the duty of each county superintendent to see that in every district there shall be taught orthography, reading, writing, English grammar, geography, arithmetic,^a physiology, hygiene^b and a system of humane education which shall include kind treatment of birds and animals.^c¹⁶

Examination of teachers.

700. It shall be the duty of the county superintendent to examine all the candidates for the profession of teacher, in the presence of the board of directors or controllers, should they desire to be present, to whom they shall first

15. Superintendent of Public Schools, 14 D. R. 635, 1905.

16. a. Act May 8, 1854, Sec. 38, P. L. 617.

b. Act April 2, 1885, P. L. 7.

c. Act March 27, 1905, P. L. 60.

apply in his county, and to give each person found qualified a certificate, setting forth the branches of learning he or she is capable of teaching; and such examination and certificate shall be renewed as often as any such teacher shall be employed in teaching any branch of learning other than those enumerated in his or her certificate, and no teacher shall be employed in any school to teach other branches than those set forth in the certificate.¹⁷

Superintendent required to examine teachers.

701. The school directors requested A. to teach a certain school in their township, whereupon she applied to the county superintendent to examine her, and if found qualified, to give her a certificate. The request was declined by the county superintendent for the reason that his rules and regulations which were published in the leading newspapers, provided that there should be no other examinations for the year 1900, and no special examinations except in urgent need to fill vacancy which cannot otherwise be filled. In reviewing the case, Justice Clark said: "It cannot be doubted that the county superintendent is required by law to examine all the candidates for the profession of teacher (in the presence of the board of school directors or controllers should they desire to be present, to whom they shall first apply in his county) and to give to each person found qualified a certificate, setting forth the branches of learning he or she is capable of teaching," etc. It is well settled that those who accept public office or employment are bound to discharge the duties required of them by law, or assign such reason for the refusal as shall be deemed sufficient by the tribunal appointed to decide. It is equally well settled that it is only where a discretionary power is given to do or omit any particular act that the refusal or omission can be justified by a general averment of causes not specified, but which are deemed sufficient by the party refusing to act. In regard to the duty of examining the candidates for teachers, there was no discretion reposed in the county superintendent. In this respect the law is imperative and

17. Act May 8, 1854, Sec. 41, P. L. 617.

nothing can justify a refusal to perform it, except in the cases of candidates of known or proved immoral character or habits, no matter what their literary or professional claims may be. The examination of persons thus disqualified, and to whom no certificate could issue, would be but a waste of time. In the case at bar, no claim has been made by the respondent, at least it does not appear in his answer, that A., the applicant, is a person of immoral character or bad reputation, nor was the refusal of the county superintendent to examine her based upon any such charges.

There is nothing in the school laws of this Commonwealth in respect to the time when such examinations shall be held, and while I am ready to concede, by implication, the authority of county superintendents to establish reasonable, proper and necessary rules and regulations in the performance of duties required by them by virtue of their employment, election or appointment, and such as are not inconsistent with the laws relating thereto, and while such superintendents may determine the dates on which they shall hold their examinations by complying with the requisites of the law, I shall hold that there is no provision whatever in the law which will permit a superintendent to fix an arbitrary rule or regulation by which applicants may be excluded from undergoing an examination at any subsequent date, except in cases of applicants of known or proved immoral habits.¹⁸

Countersigning teachers' certificate.

702. A's school directors certified that he had taught four annual school terms in the district and that they considered him well qualified as a teacher, morally, intellectually and professionally, and recommended the State Normal School at Shippensburg, Pennsylvania, to grant him a teachers' state certificate.

This endorsement of the school board then established the fact that A. had complied with the requirements of the Act May 20, 1857, P. L. 581.

18. Stroup's Petition, 10 D. R. 301, 1901.

The county superintendent refused to countersign the school board's certificate purely upon his deliberate and conscientious judgment, formed in his official capacity, from personal supervision and inspection of A's work as a teacher. The superintendent did not specify in what respect A's work as a teacher was deficient, or designate any failure to discharge the duties of a teacher.

In reviewing the case the court held that the reason advanced by the superintendent to countersign the certificate, when requested are simply the opinions and conclusions of the superintendent in regard to the ability and efficiency of A. as a teacher, without any particularization whatever of facts warranting or forming a basis for such opinions and conclusions. The act required to be done in the countersigning of the certificate, is a mere ministerial act; it is not an act to be done under the deliberative or discretionary powers of the county superintendent. The duties of this office, like that of a controller of a city, are partly ministerial and partly discretionary, and while the courts will not review his discretion, exercised in a proper case, yet he is not above the law, and his discretion is not arbitrary, but legal: *Com. vs. Phila.*, 176 Pa. 588

It is the directors, in whose employ the teacher is, who are to certify to his good moral character, experience and proficiency in teaching, and the certificate is to be "countersigned" by the county superintendent. The directors have the requisite knowledge of the facts to be certified, and their act is not to be attested by the superintendent to validate it.

The word "countersign" used in the act does not mean to recommend or endorse, but to attest or authenticate, "to authenticate by an additional signature." *Anderson's Dic. of Law*, 270. 7 *Am. and Eng. Ency. of Law* (2 ed.) 897.

If the act of assembly prescribed that the certificate should be given by the county superintendent, then his act would be discretionary, and a refusal to sign the certificate would not be reviewable by the court. He was not asked

to certify to the facts stated in the certificate, but only to countersign the same.¹⁹

When certificate may be annulled.

703. The county superintendent may annul any certificate given by him or his predecessor in office, when he shall think proper, giving at least ten days' previous notice thereof, in writing, to the teacher holding it, and to the directors and controllers of the district in which he or she may be employed.²⁰

Legal requirements to remove a teacher on "Ten Days' Notice."

704. In this case the plaintiff is a public school teacher in the city of Reading, holding a professional certificate issued to him by defendant as superintendent of the schools of said city. On July 6, last, the latter notified plaintiff that he proposed to annul said certificate on July 16, the power to do which he claims by virtue of the proviso to Sec. 41, act May 8th, 1854, P. L. 617. Let it be granted for present purposes, that that proviso stands unrepealed by act April 9, 1867, Secs. 11 and 12, and applies to certificates issued since that enactment. It is clear that any certificate granted to a teacher is a "license" (see Sec. 12) to him to pursue a certain avocation and to seek a certain public employment, which, without it, he cannot pursue or seek. That right during the period for which the certificate is granted to him, is a valuable property in his hands, just as right to practice as an attorney of a court is property in the hands of him who has been admitted to it: *Ex parte Steinman*, 95 Pa. 220. The annulment of a teacher's certificate is the destruction of his property. No man, in this state, can be deprived of his property except by a proceeding judicial in its nature, and as such involving as an indispensable requisite an opportunity of being heard: *Brown vs. Hummel*, 6 Pa. 86, 91; *Craig vs. Kline*, 65 Pa. 399; *Palairret's App.*, 67 Pa. 479; *Philadelphia vs. Scott*, 81 Pa. 80. That opportunity the act of May 18, 1854, P. L. 617, Sec. 41,

19. *Donaldson vs. York County School Superintendent*, 8 D. R. 185, 1899.

20. Act May 8, 1854, Sec. 41, P. L. 617.

secures to a teacher in the provision for notice to him previous to the annulment of his certificate ; for, as was pointed out by Mr. Justice Field in *Windsor vs. McVeigh*, 93 U. S. 274, the requirement of notice necessarily implies the right to appear and be heard. Remembering that the effect of an annulment of a certificate, in the case of one whose profession is that of a public teacher, and who has passed that period of life when he can turn his hand to anything, means the destruction of his livelihood, it is surely true that the notice and opportunity for hearing prescribed by the statute are conditions precedent to the exercise of the power of annulment given by it. Where, however, a thing to be done is a condition precedent to the exercise of a power granted, it is essential to the existence of the power, and being of the essence thereof, must be strictly observed : *Norwegian Str.*, 81 Pa. 349 ; *Reading vs. Krause's Est.*, 167 Pa. 23. If it is not, the attempt to exercise the power cannot be otherwise than *ultra vires*. Now, whilst a public officer clothed with a discretion is not, when proceeding in conformity with the statute, liable to be controlled by the courts in the exercise of that discretion, *Runkle vs. Com.*, 97 Pa. 328 ; *Dechert vs. Com.*, 113 Pa., 229, if he attempts that which is *ultra vires*, the courts will restrain him by injunction : *Roth vs. Marshal*, 158 Pa. 272, 274 ; 2 High Inj. Sec. 1309 ; 1 *Spelling, Extraord. Relief*, Sec. 609.

Sec. 41, Act of May 8, 1854, P. L. 617, empowers the superintendent to annul the certificate treated of in the preceding part of the section, " giving at least ten days' previous notice thereof, in writing, to the teacher holding it, etc." The unmistakable meaning of this language is, that the teacher whose certificate it is intended to annul shall have notice of that intention preceding its consummation, and ten days from the giving of the notice within which to be heard in his defence. The meaning of the law is the law itself : *Reiser vs. Sav. F. Ass'n.*, 39 Pa. 137, 144. Where a thing is to be done within a certain period from a given date, the rule established in this state down to and including *Goswiler's Est.* 3 P. & W. 200, was that the day from which

the reckoning begins is excluded from the computation of the period allowed.

The defendant, as superintendent, claiming the power to annul plaintiff's certificate under and in accordance with the act of 1854, Sec. 41, was bound to notify him of the intended exercise of that power, and to give him at least ten days from the date of such notice to be heard in his defense, excluding the day of the notification and including the whole of the tenth day thereafter, before the expiration of which the intended action could not lawfully be taken; on July 6, defendant notified plaintiff that on July 16 his certificate would be annulled; assuming that such a declaration did not negative a willingness to hear any defense that might be presented, defendant thus gave plaintiff only nine entire days within which to present it. This was not a compliance with the requisition of the statute, and as without compliance therewith there is no power of annulment under the same, the attempted exercise of that power by defendant in this case must be held to be *ultra vires*.²¹

When certificate shall not be granted.

705. No person shall receive a certificate as a teacher from a county, city or borough superintendent who is in the habit of using as a beverage any intoxicating drinks.²²

Power of county superintendent under the act.

706. Kell had been a teacher for ten years and appeared before Rudy, county superintendent, to be examined for a professional certificate. Rudy certified that Kell had passed the examination, but refused to certify that Kell was a man who was not in the habit of using intoxicants as a beverage or that he was of good moral character. Kell then petitioned the court to compel the county superintendent to issue a certificate to him. The lower court decided that Kell was entitled to his certificate.

An appeal to the Superior Court, President Judge Rice, in reversing the lower court, said, in part: "The 41st Section of the Act of May 8, 1854, P. L. 617, makes it

21. Scheibner vs. Baer, 174 Pa. 482, 1896.

22. Act April 9, 1867, Sec. 11, P. L. 51.

the duty of the county superintendent to examine candidates for the profession of teachers, and to give each person found qualified a certificate setting forth the branches of learning he or she is capable of teaching. The same section gives him authority to annul any such certificate given by him or his predecessor in office, when he shall think proper, giving at least ten days' previous notice to the teacher and to the directors where he is employed. Section 11 of the Act of April 9, 1867, P. L. 55, provides that no teacher shall receive from a county, city or borough superintendent a certificate as a teacher who has not a fair knowledge of certain specified branches, and the theory of teaching; "nor shall such certificate be given to any person in the habit of using as a beverage any intoxicating drinks." The officer who, under the law, is to decide whether the applicant has the educational qualifications specified in the first part of the section is the superintendent; and it is clear that there is no appeal from his decision in that matter to the judgment of the court or a jury. Being forbidden by law to issue a certificate to one who is in the habit of using intoxicants as a beverage, it is equally clear that it is within his province to see that the policy of the law in this regard is carried out. The power to annul a certificate for proper cause would, of itself and without more, imply a power to refuse a certificate for proper cause. The law is binding upon his conscience, and the performance of his duty requires the exercise of judgment and discretion. To say then that his duty to issue the certificate, if he finds that the applicant possesses the educational qualifications, is purely ministerial, is to deny to him the power which the legislature has clearly made it his duty to exercise when personal knowledge or a due investigation convinces him that the applicant is otherwise legally disqualified. It seems too plain for argument that the duty of the superintendent is not merely ministerial."

"The learned judge below concedes that, if the applicant is a person of known immoral character or a known habitual drinker of intoxicants, the county superintendent would have a right to refuse him a certificate. Having

power for sufficient reason to refuse a certificate, he must, necessarily, have the power—and it is his duty to exercise it—to ascertain and determine whether the reasons exist, for the power is vested nowhere if it is not vested in him. If this be so, the finality of his decision does not depend upon its absolute correctness. But, it is argued, the superintendent cannot arbitrarily refuse a certificate upon such grounds without giving the applicant a hearing and an opportunity to refute the charge. We assent to this unqualifiedly; but, where, and before whom is he entitled to a hearing? Manifestly the superintendent is the officer to hear and decide. Certainly no fair minded superintendent would refuse a certificate upon mere rumor, or even direct information, without giving the applicant a hearing upon a matter which so closely affects his reputation and means of livelihood.

“Except in extreme cases the courts have refused to control the discretion of those to whom has been committed the execution of the common school laws of the Commonwealth. *Com. ex rel. Sherry vs. Jenks*, 154 Pa. 368; *Hysong vs. School District*, 164 Pa. 629; *Roth vs. Marshall*, 158 Pa. 272; *Freeman vs. School Directors*, 37 Pa. 385; *Whitehead vs. School District*, 145 Pa. 418; *Wharton vs. School Directors*, 42 Pa. 358; *School Directors vs. Anderson*, 45 Pa. 388; *Com. vs. Shaw*, 96 Pa. 268, are but a few of the many cases. Speaking of the power of a board of directors to dismiss a teacher, Mr. Justice Clark said: “The board, by the statute, is empowered both to employ teachers, and, for any one of these causes, to dismiss them. It would greatly impair the government and efficiency of the common schools, if the honest judgment and discretion of the board, exercised in good faith, could be reviewed and reversed by a jury: Such a policy would place the practical management and control of the schools on very precarious and uncertain ground. Every consideration of private interest, or of public policy, requires that this quasi judicial power of the board should be recognized. The absolute impossibility of placing the jury in the position of the school board, with the school and its instructor before

them, demonstrates the fact that it would be unwise and impracticable to do otherwise :” *McCrea vs. School District*, 145 Pa. 550. All this might be said, with equal pertinency, with regard to the action of a county superintendent in refusing a certificate for a legal reason. His duties and responsibilities are great. Upon his fearless, impartial and conscientious discharge of them must depend, to a very large extent, the efficiency of the public schools within his district. To enable him to perform them effectively, the legislature has conferred upon him powers commensurate therewith. In his province, his judgment and conscience are as free from outside control, except in the mode or for the cause prescribed by the statute, as those of a judge upon the bench ; and, while we have not to do with the policy or expediency of the law, we may remark, that the dangers which are incident to the vesting of such power in the hands of one man are not greater than would be the evils if every unsuccessful applicant for a certificate might appeal from his decision, and have the question to his educational or moral qualifications tried by a jury. We ought not to allow ourselves to be drawn away from the well settled principles governing the exercise of judicial deliberative and discretionary powers by a public officer, by the apparent hardship of particular cases. We may be sure that, if experience had shown that the power committed to county superintendents to pass upon the fitness of applicants for teachers’ certificates had been found in practice to be too great, the legislature would, before this, have applied the proper corrective.”²³

County superintendent’s report on instruction of physiology and hygiene.

707. It shall be the duty of county, city, borough superintendents, and boards of all educational institutions, receiving aid from the Commonwealth, to report to the superintendent of public instruction any failure or neglect on the part of boards of school directors, boards of school controllers, boards of education, and boards of all educational institutions, receiving aid from the Commonwealth,

23. *Kell vs. Rudy*, 1 Pa. Superior Ct. 507, 1896.

to make proper provision in any and all of the schools or districts under their jurisdiction, for instruction in physiology and hygiene, which, in each division of the subject so pursued, gives special reference to the effects of alcoholic drinks, stimulants, and narcotics upon the human system, as required by this act ;²⁴ and such failure on the part of directors, controllers, boards of education, and boards of educational institutions, receiving money from the Commonwealth, thus reported, or otherwise satisfactorily proven, shall be deemed sufficient cause for withholding the warrant for state appropriation of school money to which such district or educational institution would otherwise be entitled.²⁵

Duty of county superintendent on failure of school board to provide competent teachers. When state appropriation withheld or forfeited.

708. In case the board of directors or controllers shall fail to provide competent teachers to teach the several branches above specified,²⁶ it shall be the duty of the county superintendent to notify the board of directors or controllers, in writing, of their neglect, and in case provision is not made forthwith for teaching the branches aforesaid, to report such facts to the superintendent of common schools, whose duty it shall be to withhold any warrant for the quota of such district of the annual state appropriation, until the county superintendent shall notify him that competent teachers of the branches aforesaid have been employed. And in case of neglect or refusal of the board of directors or controllers to employ such competent teachers as aforesaid, for one month after such notification by the county superintendent that such teachers have not been provided, such district shall forfeit absolutely its whole quota of the state appropriation for that year.²⁷

24. See *Supra* COMMON SCHOOL BRANCHES, Sec. 286, NOTE 3 ;
Sec. 1, Act April 2, 1885, P. L. 7.

25. Act April 2, 1885, Sec. 2, P. L. 7.

26. See *Supra* COMMON SCHOOL BRANCHES, Sec. 286, NOTE 2.

27. Act May 8, 1854, Sec. 38, P. L. 617.

Duties of county superintendent, visiting schools.

709. It shall be his duty to visit, as often as practicable, the several school of his county, and to note the course and method of instruction and branches taught, and to give such directions in the art of teaching and the method thereof in each school, as to him, together with the directors or controllers, shall be deemed expedient and necessary ; so that each school shall be equal to the grade for which it was established, and that there may be, as far as practicable, uniformity in the course of studies in schools of its several grades respectively.²⁸

No authority to teach for compensation.

710. It shall be unlawful for any person holding the office of county superintendent of common schools to engage in the business or profession of teaching in any of the schools of the Commonwealth, unless it be done without any other compensation than that paid them as county superintendent.²⁹

Any violation of the provisions of this act on the part of any county superintendent shall be deemed a sufficient cause for removal from office by the state superintendent of public instruction.³⁰

School directors' expenses paid to triennial convention.

711. School directors of this Commonwealth who shall attend the triennial convention of directors for the purpose of electing a county superintendent, as provided by act of May eighth, one thousand eight hundred and fifty-four, shall receive one dollar each, and, in addition the sum of three cents for every mile necessary to be traveled in going to and returning from the place where the election shall be held, the amount to be paid by the school treasurers of the respective districts on the proper vouchers, and the account to be audited as other expenses.³¹

28. Act May 8, 1854, Sec. 37, P. L. 617.

29. Act April 26, 1893, Sec. 1, P. L. 24.

30. Act April 26, 1893, Sec. 2, P. L. 24.

31. Act March 18, 1899, Sec. 1, P. L. 11.

Misdemeanor for any candidate to pay director's expenses to convention.

712. It shall be deemed a misdemeanor for any candidate for the office of county superintendent to pay or cause to be paid, directly or indirectly, any part of the expenses of any director who shall attend the triennial convention, and on conviction thereof such candidate shall be fined a sum not less than fifty nor more than three hundred dollars, at the discretion of the court.³²

County commissioners to furnish office for county superintendent.

713. It shall be the duty of the county commissioners of each county in this Commonwealth, and they are hereby authorized and required to provide, furnish and maintain fit and suitable office rooms, at the respective county seats of said counties, for the use of the county superintendents of schools in all the counties of the Commonwealth ; and the said county commissioners shall also provide, furnish and maintain safe and suitable storage, in connection with such office rooms, for the preservation and safe-keeping of the school records, books and documents pertaining to such offices.³³

Power to remove county superintendent.

714. The superintendent of public instruction has the power to remove any county superintendent for the neglect of duty, incompetency, or immorality and to appoint another in his stead until the next triennial convention of directors.³⁴

County superintendent removed for neglect of duty and incompetency.

715. A. was duly elected and commissioned as county superintendent of common schools for the term of three years, from the first Monday of June, 1857 ; he entered upon and continued to perform the duties of his office until the second day of November, 1858, when he received the following notice from the superintendent of public instruction.

32. Act March 18, 1899, Sec. 2, P. L. 11.

33. Act June 8, 1891, Sec. 1, P. L. 228.

34. Act May 8, 1854, Sec. 46, P. L. 617.

PENNSYLVANIA DEPARTMENT OF COMMON SCHOOLS,
HARRISBURG, NOVEMBER 2, 1858.

Sir :

You are hereby removed from the office of county superintendent for "neglect of duty and incompetency." You will immediately deliver to your successor B, the books of "County Certificates" and "Provisional Certificates" in your hands, and the marginal references or "duplicates" of all certificates, of either kind, issued by you since the first Monday in June, 1857; together with all other official records or documents in your possession, or under your control, taking his receipt from the same in detail; upon the presentation of which at this department your arrearages of salary and express charges will be adjusted.

Your obedient servant,

H. C. HICKOK,

Superintendent Public Instruction.

A. had not received any previous notice of any charge against him, either of incompetency or neglect of duty, nor had any been made. The superintendent refused to specify any fact, mistake or act of commission or omission upon which the charge could have been based, or give him a hearing.

The question was raised, whether the power of removal of county superintendent, vested in the superintendent of public instruction has been legally exercised in this instance.

In delivering the opinion of the court Justice Reed said, in part: "The whole system being the creature of the legislature, it was within their power to have made the county superintendents removable at the pleasure of the governor, the state superintendent, or any other officer or body that they thought proper. Instead of this, a county superintendent is elected by a convention emanating from the people, for a term of years, and holding it, in fact, upon the tenure of good behaviour. If not guilty of neglect of duty, incompetency or immorality, he cannot be removed by the state superintendent, to whom that power has been intrusted by the legislative will.

Where an appointment is during pleasure, or the power of removal is entirely discretionary, there the will of the appointing or removing power is without control, and no reason can be asked for, nor is it necessary that any cause should be assigned.

But that is not the rule when the appointment is either during good behavior for a limited or unlimited period, or where the removal can only be for certain specified causes. In this case it is acknowledged that there was no charge or specification—no notice, no hearing, no evidence produced, nor any opportunity given to the county superintendent to defend himself. All these were necessary before a removal could take place, and this appears to have been the construction originally placed by the state superintendent, upon the section of the Act of 1854, vesting the power of removal for specified causes in him.

The county superintendent of Schuylkill County was, therefore, removed contrary to law; and as the appointment of a successor was consequently void, A. is now and always has been, since he was last commissioned by the superintendent of public instruction, entitled to the office, and to all its rights and emoluments.”³⁵

Duty of county superintendent to call together all the directors for certain purposes.

716. It shall be the duty of each county superintendent of schools to call together, during the school year beginning June, one thousand nine hundred and five, and annually thereafter, at the county seat, or some other suitable place in the county, all the school directors of the county, for the consideration and discussion of questions pertaining to school administration.³⁶

35. Field vs. Commonwealth, 32 Pa. 478, 1859.

36. Act April 10, 1905, Sec. 1, P. L. 139.

CHAPTER XXX.

SUPERINTENDENT OF PUBLIC INSTRUCTION.

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State superintendent of common schools to be appointed. Creation of office.

717. That from and after the first Monday in June, Anno Domini one thousand eight hundred and fifty-seven, the department of common schools shall be detached and remain separate from the office of the secretary of the Commonwealth, and a superintendent of common schools shall be appointed by the governor every third year, by and with the advice and consent of the senate, and shall hold his office from the first Monday of June, for and during the term of three years, if he shall so long behave himself well, and he shall be liable to be removed from office by the governor for misbehavior or misconduct at any time during his term.¹

Superintendent of public instruction.

718. The superintendent of public instruction shall exercise all the powers and perform all the duties of the

1. Act April 18, 1857, Sec. 1, P. L. 263.

superintendent of common schools, subject to such changes as shall be made by law.²

Title and term of office. Pennsylvania Constitution.

719. Section 8 of Article IV. Constitution of 1874, changes the title "superintendent of public schools" to "superintendent of public instruction," and makes his term of office four years.

The superintendent of public instruction is appointed by the governor, with the advice and consent of two-thirds of all the members of the senate, for the term of four years.

Vacancies.

720. Any vacancy that may occur in said office of superintendent shall be supplied by a new appointment for the unexpired term of the former incumbent :

Provided, That in the event of any such removal, the governor shall at the time communicate his reasons therefor in writing, to the superintendent thus displaced, and also to the senate, if in session, and if not, within ten days after their next meeting.³

Filling vacancy in the office of superintendent of public instruction.

721. A vacancy having occurred in the office of superintendent of public instruction, by the death of the incumbent during the recess of the senate, the governor appointed the defendant to said office, and commissioned him to hold it until the end of the next session of the senate, if he should so long behave himself well.

At said session, on January 6, 1891, the governor nominated the defendant to the senate for a term of four years, to be computed from March 1, 1890, the date at which he took possession of the office. The senate confirmed the appointment on January 20, 1891. In the meantime the governor's successor had been inaugurated :

Under Section 8, Article IV. of the constitution, the confirmation by the senate extended the defendant's original appointment, and entitled him to hold the office for the unexpired portion of the vacancy, although the succeeding

2. Article IV. Sec. 20. Pennsylvania Constitution of 1874.

3. Act April 18, 1857, Sec. 1, P. L. 263.

governor refused to commission him therefor, and after the senate's adjournment, commissioned another person.⁴

Security. Powers and duties.

722. The superintendent of common schools, and his successors in office, appointed under this act, shall furnish the same security, exercise the same functions and be charged with the same duties and responsibilities that are now by law required of and devolved upon the superintendent of common schools.⁵

To settle controversies.

723. The superintendent of public instruction shall decide without appeal⁶ and without cost to the parties, all controversies or disputes that may arise or exist among the directors or controllers of any district, between directors or controllers of adjoining districts, or between collectors or treasurers, and directors or controllers, concerning the duties of their respective offices ; the facts of which controversies or disputes shall be made known to him by written statements, by the parties thereto, acting in their official capacities, verified by oath or affirmation if required, and accompanied by certified copies of all necessary minutes, contracts, orders or other documents.⁷

Duty to give information relative to school laws.

724. He shall, whenever required, give advice, explanation, construction, or information to the district officers, and to citizens, relative to the common school law, the duties of common school officers, the rights and duties of parents, guardians, pupils and all others, the management of the schools, and all other questions and matters calculated to promote the cause of education⁸

Superintendent to sign orders for state appropriation.

725. He shall sign all orders on the state treasurer for the payment of such moneys to the treasurers of the several

4. Commonwealth vs. D. J. Waller, Jr., 145 Pa. 235, 1892.

5. Act April 18, 1857, Sec. 3, P. L. 263.

6. The superintendent of common schools has no authority to decide a question of a contested election. Mershon vs. Baldridge, 7 Watts 500, 1838.

7. Act May 8, 1854, Sec. 46, P. L. 617.

8. Act May 8, 1854, Sec. 46, P. L. 617.

school districts as they may be entitled to receive from the state, and for all other moneys to be paid out of the appropriation to common schools made by this act.⁹

Duty to prepare and forward blank forms.

726. He shall prepare blank forms for the annual district reports, with suitable instructions and forms for conducting the various proceedings and details of the system in a uniform and efficient manner and forward the same to the county superintendents, who shall distribute them to and among the proper district officers of their respective counties.¹⁰

Annual report to the legislature.

727. He shall prepare and submit to the legislature, an annual report, containing a full account of the condition of the common schools in the state, the expenditure of the system during the year, estimates of the sums requisite for the ensuing year, the whole number of pupils, the cost of teaching each, the number of districts, plans for the improvement of the system, and all such matters relating to the concerns of common schools, and to the duties of his office, as he may deem it expedient to communicate.¹¹

Duty to provide a seal and appoint clerks.

728. He shall provide a seal, with suitable device, for the use of the Department of Common Schools, by which copies of papers deposited or filed therein, and all official acts and decisions, may be authenticated under said seal; and when so authenticated, shall be evidence equally and in like manner as the originals; he may also designate and appoint one of the clerks employed by him to be his general deputy, who may perform all his duties of superintendent of common schools in case of his absence or a vacancy in his office.¹²

Power to remove county superintendents.

729. He shall have the power of removing any county superintendent for neglect of duty, incompetency, or im-

9. Act May 8, 1854, Sec. 46, P. L. 617.

10. Act May 8, 1854, Sec. 46, P. L. 617.

11. Act May 8, 1854, Sec. 46, P. L. 617.

12. Act May 8, 1854, Sec. 46, P. L. 617.

morality, and to appoint another in his stead until the next triennial convention of directors.¹³

County commissioners to report the number of taxables.

730. It shall be the duty of the commissioners of each county to ascertain triennially, with the assistance of the respective assessors, the exact number of taxable citizens residing in each school district in their several counties, and to certify the same, under their hands and seals of office, to the superintendent of common schools, who is hereby directed to adopt the number of taxables thus certified to him, as the basis of distribution of the state appropriation, which said certificates shall be prepared and transmitted, on or before the first Monday of June, in every third year, commencing with the first Monday of June, Anno Domini one thousand eight hundred and sixty-five.¹⁴

Effect of commissioners' neglect of duty.

731. If the commissioners of any county shall neglect to forward such certificates on or before said day, the superintendent may in such case adopt the number of taxables set forth in the next preceding certificate or return.¹⁵

Errors.

732. If any error in the certificate of taxables shall occur, whereby a district shall receive more or less of the state appropriation than is justly due said district, the county commissioners shall have authority, and they are hereby required, immediately to forward to the superintendent a correct list of taxables, and the superintendent shall thereupon make it the basis of the appropriation due said district.¹⁶

Superintendent to employ lecturers and instructors at summer assemblies.

733. The superintendent of public instruction be, and is hereby authorized to employ or aid in the employment of competent lecturers or instructors, to attend and lecture, or teach, at summer assemblies held by associations, of this

13. Act May 8, 1854, Sec. 46, P. L. 628.

14. Act April 17, 1865, Sec. 1, P. L. 61.

15. Act May 8, 1854, Sec. 47, P. L. 617.

16. Act May 8, 1854, Sec. 48, P. L. 617.

Commonwealth, incorporated for the purpose of promoting education and popular culture, and by the Pennsylvania Educational Association; and, for this purpose, is hereby authorized to pay, for such employment or in aid of such employment by said corporation and association, such sums as may be specifically appropriated for that purpose by the legislature, from time to time, in the general appropriation bill, for such attendance of said lecturers or instructors at the assembly or assemblies of such association, which payment shall be made by the state treasurer, out of any money not otherwise appropriated, either directly to the lecturers or instructors, so employed by the said superintendent, or to the associations employing the same with the approval of the said superintendent, upon warrant of said superintendent, countersigned by the auditor général.¹⁷

Superintendent authorized to employ stenographer. Salary.

734. On and after the passage of this act the superintendent of public instruction be and is hereby authorized to employ one person, who shall be a skilled stenographer and typewriter, in the department of public instruction at a salary of ten hundred dollars per annum.¹⁸

Certain public documents to be placed in each public school.

735. On the passage of this act, and thereafter following each decennial census, the superintendent of public instruction shall cause to be placed in each public school of this Commonwealth above the primary grade, one copy of Smull's Legislative Hand-book, and bi-ennially one copy of the School Laws and Decisions, for the use of said public schools.¹⁹

Copies for distribution.

736. Be it further enacted, that on the passage of this act, and for the purposes named herein, the superintendent of public instruction shall be allowed a sufficient number of Smull's Legislative Hand-books and School Laws and Decisions for the purpose of carrying into effect the provisions of this act.²⁰

17. Act April 25, 1903, Sec. 1, P. L. 315.

18. Act June 26, 1895, Sec. 1, P. L. 324.

19. Act April 29, 1897, Sec. 1, P. L. 34.

20. Act April 29, 1897, Sec. 2, P. L. 34.

CHAPTER XXXI.

STATE APPROPRIATION.

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One-third on number of paid teachers.

737. One-third of the money annually appropriated for common schools in this Commonwealth shall be distributed on the basis of the number of paid teachers regularly employed for the full annual term of the district, not including substitute teachers or teachers employed to fill vacancies which may occur during the school year for which the appropriation was made; the certificates of the number of teachers regularly employed to be made as hereinafter provided.¹

One-third on number of children of school age.

738. One-third of the appropriation shall be distributed on the basis of the number of children of school age between the years of six and sixteen residing in the respective districts, the enumeration and certificates to be made as hereinafter provided.²

1. Act July 15, 1897, Sec. 1, P. L. 271.

2. Act July 15, 1897, Sec. 2, P. L. 271.

One-third on the number of taxables.

739. The remaining one-third of the appropriation shall be distributed on the basis of the number of taxables as returned by the last biennial assessment.³

Certify to superintendents.

740. On the first Monday of December, one thousand eight hundred and ninety-seven, and biennially thereafter, the president and secretary of each school board shall, under oath, certify to the county, city or borough superintendents of their respective counties, cities or boroughs, the number of teachers in their employ as contemplated in this act; and on the first Monday of January, one thousand eight hundred and ninety-eight, and biennially thereafter, the said county, city or borough superintendent shall, under oath, make return to the superintendent of public instruction on such blank as he shall prepare, a tabulated return by districts of the teachers of his county, city or borough, and any president or secretary of a school board or superintendent of a county, city or borough, who neglects or refuses to perform his duty within ten days of the time designated, shall be subject to a fine of not less than twenty-five nor more than one hundred dollars.⁴

Duty of assessors.

741. It shall be the duty of the assessors of the several townships, wards and boroughs in the counties and cities of this Commonwealth, and of the assessors of voters in any of said wards in cities of the first class, where the assessors of real estate are not assessors of voters, to make an enrollment, at the time of the making of their respective assessments, but not more than once in any year, of the total number of children of school age, between the ages of six and sixteen years, in addition to the duties required of them under existing laws, and for the same compensation per diem now allowed by law.⁵

3. Act July 15, 1897, Sec. 3, P. L. 271.

4. Act July 15, 1897, Sec. 4, P. L. 271.

5. Act April 19, 1899, P. L. 64, amending Act July 15, 1897, Sec. 5, P. L. 271.

Note.—The enrollment is distinct from that required to be made by the compulsory education acts; *supra* COMPULSORY ATTENDANCE, Sec. 541; and the two need not be made at the same time. Construction of Act July 15, 1897, 8 D. R. 630, 1899.

Blanks to be prepared by the superintendent of public instruction.

742. The blanks required for this enumeration and enrollment shall be prepared according to the form prepared by and under the direction of the superintendent of public instruction, who shall cause the same to be forwarded to the county commissioners of the several counties for distribution to the assessors at the expense of the state.⁶

Enumeration and enrollment.

743. The enumeration and enrollment herein provided for shall be made by the assessors at the same time they are required by law to make their regular assessments for county taxes, one thousand eight hundred and ninety-seven, and at the same time, and biennially thereafter, the official returns to be made to the county commissioners shall be filed by them in the office of the county commissioners, duly verified by oath or affirmation, on or before the fourth Saturday of December, one thousand eight hundred and ninety-seven, and biennially thereafter. The county commissioners to return a summary of the same to the superintendent of public instruction on or before the last Saturday of January, next following⁷

Assessors.

744. Any assessor who shall refuse or neglect to make the enumeration, enrollment and official returns required by this act, shall pay a fine of not less than twenty-five or more than one hundred dollars, and shall be liable to removal from office upon complaint to the court of common pleas of the proper county, which complaint it shall be the duty of the county commissioners to make in the case of neglect or refusal of any assessor to comply with the provisions of this act.⁸

Blanks.

745. The blanks for the use of the county commissioners in the preparation of their biennial report to the depart-

6. Act April 19, 1899, P. L. 64, amending Act July 15, 1897, Sec. 5, P. L. 271.

7. Act July 15, 1897, Sec. 6, P. L. 271.

8. Act July 15, 1897, Sec. 7, P. L. 271.

ment of public instruction, containing a summary of the returns made to them by the assessors of their respective districts, shall be prepared by the superintendent and forwarded to the county commissioners of the several counties for the required purpose.⁹

Repeal.

746. All acts or parts of acts inconsistent herewith are hereby repealed.¹⁰

Basis of distribution by taxables.

747. It shall be the duty of the commissioners of each county to ascertain triennially, with the assistance of the respective assessors, the exact number of taxable citizens residing in each school district, in their several counties, and to certify the same, under their hands and seals of office, to the superintendent of common schools, who is hereby directed to adopt the number of taxables thus certified to him, as to the basis of distribution of the state appropriation; which said certificate shall be prepared and transmitted, on or before the first Monday of June, in every third year, commencing with the first Monday of June, Anno Domini 1865.¹¹

Failure to forward certificate.

748. And if the commissioners of any county shall neglect to forward such certificates on or before said day, the superintendent may, in such case, adopt the number of taxables set forth in the next preceding certificate or return.¹²

Errors, how corrected.

749. If any error in the certificate of taxables shall occur, whereby a district shall receive more or less of the state appropriation than is justly due said district, the county commissioners shall have authority, and they are hereby required, immediately to forward to the superintendent a correct list of taxables, and the superintendent

9. Act July 15, 1897, Sec. 8, P. L. 271.

10. Act July 15, 1897, Sec. 9, P. L. 271.

11. Act April 17, 1865, Sec. 1, P. L. 61.

12. Act of May 8, 1854, Sec. 47, P. L. 617.

shall thereupon make it the basis of the appropriation due said district.¹³

When new district is formed, number of taxables therein and in the old districts, to be certified.

750. Whenever any new district shall be formed in any county of this Commonwealth, it shall be the duty of the commissioners thereof to certify to the superintendent of common schools, before the commencement of the next succeeding school year, the number of taxable inhabitants therein, and also the number in the district or districts from which it was taken, separately, according to the last preceding triennial enumeration of taxables made for school purposes, so that the whole number in such new district, and in that or those out of which it was taken, being added together, shall be neither greater nor less than the number that was therein before the change was made, and according to the last triennial certificate or return of taxables thereof made by said commissioners.¹⁴

Non-accepting districts which have put schools in operation to be entitled to back appropriations.

751. All school districts in this Commonwealth, previously non-accepting, which have put in operation a system of common schools, according to law, at any time since the year 1860, are hereby declared entitled to the same state appropriations for school purposes which they would have received had they complied with the law in reference to common schools, during and since that year; and the superintendent of common schools is authorized and required to pay out of the appropriation to common schools for the year 1869, by warrants upon the state treasury, all sums found to be due to such districts by the provisions of this act.¹⁵

Additional state appropriation.

752. Whenever the commissioners of any county of this Commonwealth shall certify, under their hands and

13. Act May 8, 1854, Sec. 48, P. L. 617.

14. Act May 8, 1854, Sec. 49, P. L. 617.

15. Act April 9, 1868, Sec. 1, P. L. 76.

seals of office, to the superintendent of public instruction, that more taxable citizens actually resided in any school district of their respective counties, at the time of the last triennial enumeration of taxables, than were then certified and returned by them, in compliance with the act of April 17, 1865, Sec. 1, P. L. 61 (*supra* Sec. 747), the superintendent of public instruction shall draw his warrant upon the state treasurer for whatever additional state appropriation such district or districts may be entitled, under the distribution made for the year or years for which such incomplete enumeration was returned : Provided, That under this act, no district shall be entitled to additional appropriation, for any year preceding 1870, and hereafter, for no year prior to the year in which the next preceding triennial enumeration of taxables was made.¹⁶

State appropriations to districts formed after triennial assessment.

753. The superintendent of public instruction be and he is hereby authorized to draw his warrant for the payment of the amount or portion of the state appropriation to common schools equitably due school districts formed after any triennial assessment, by reason of rapid growth of population, and which under the present law can get no portion of the state appropriation until after the next succeeding triennial return of resident taxables.¹⁷

Basis of distribution.

754. The basis of distribution in such cases, shall be the number of resident taxables as shown by the next preceding annual assessment and return by the county commissioners to the department of public instruction.¹⁸

When warrant shall issue for state appropriation.

755. As soon as the schools of any district shall have been kept open and in operation at least four months¹⁹ subsequent to the first Monday in June preceding, the president of the board of directors or controllers, shall certify the same under oath or affirmation together with the name of

16. Act April 12, 1878, Sec. 1, P. L. 13.

17. Act May 23, 1891, Sec. 1, P. L. 114.

18. Act May 23, 1891, Sec. 2, P. L. 114.

19. See *Supra* SCHOOL TERM, Sec. 525.

the district treasurer, and his post-office address, to the county superintendent, who shall immediately forward the same to the superintendent of common schools, who, upon the receipt of the same shall draw his warrant on the state treasurer for the whole amount such district is entitled to receive from the annual state appropriation: Provided, That said board of directors or controllers shall have made report of condition of the schools in their districts, as directed by the 23d section of this act: ²⁰ And provided also, That the foregoing certificate shall have been transmitted to the superintendent of common schools within the school year for which the warrant is to be issued. ²¹

Appropriation to township high schools.

756. Out of the said amount, hereby appropriated, there shall be set apart the sum of two hundred thousand dollars, to be expended on the warrants of the superintendent of public instruction, for the encouragement and support of the township high schools: Provided, That participation in the amount hereby appropriated for the encouragement and support of township high schools shall not be made dependent upon the teaching of any dead or foreign language. ²²

20. . *Supra* Director's annual report to county superintendent, Sec. 204, 205.

21. Act May 8, 1854, Sec. 36, P. L. 617.

22. Act May 11, 1905, Sec. 8, P. L. 596.

CHAPTER XXXII.

COMMON SCHOOL EDUCATION IN CITIES OF THE FIRST CLASS.

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Board of public education. Appointment and term.

757. The control of all the schools supported by any school district of the first class shall be vested in a board of public education, to consist of twenty-one (21) members, who shall be appointed by the judges of the courts of common pleas of the county in which the said school district of the first class shall be situated, for terms of three (3) years each, except that the original appointments under this act shall be as follows : seven for one year, seven for two years, and seven for three years, and members shall be eligible for

reappointment. The members shall serve without compensation.¹

Vacancies. Eligibility.

758. Vacancies for unexpired terms, caused by death, resignation or otherwise shall be filled by the said judges of the courts of common pleas. No person shall be eligible to appointment to the board of public education who shall be less than thirty (30) years of age, and who shall not have resided in the school district at least one year immediately preceding the appointment.²

Oath of office.

759. The members of said board of public education, before proceeding to discharge the duties of their office, shall take the oath of office required of school officials under the laws of this Commonwealth.³

Organization.

760. The board of public education herein provided shall meet for organization upon the first Monday in January next succeeding the passage of this act. They shall organize by selecting their own officers, and shall hold stated meetings at least once a month during the school year, and such additional meetings as they may from time to time provide for.⁴

Duties of board of education.

761. The duties of the board shall be to determine questions of general policy, appoint the executive officers hereinafter prescribed, define their duties, direct expenditures, appoint teachers and in general to legislate upon all matters concerning the conduct of the schools.⁵

Sectional school boards. Election. Term.

762. Sectional school boards in and for each ward of the city (constituting said school district of cities of the first class), consisting of twelve members each, shall be chosen

1. Act April 22, 1905, Sec. 1, P. L. 267.

2. Act April 22, 1905, Sec. 1, P. L. 267.

3. Act April 22, 1905, Sec. 1, P. L. 267.

4. Act April 22, 1905, Sec. 1, P. L. 267.

5. Act April 22, 1905, Sec. 1, P. L. 267.

by the qualified electors in each ward of the city, at the next annual municipal election succeeding the passage of this act, four for one year, four for two years, and four for three years ; and thereafter, at each annual election, four for three years.⁶

Proviso.

763. No elector shall vote for more than three candidates for membership in any sectional school board, except at the next annual municipal election succeeding the passage of this act, when an elector may vote for not more than nine ; three for a term of one year, three for a term of two years, and three for a term of three years : And provided further, That when vacancies occur the electors may vote for candidates to fill unexpired terms.⁷

Eligibility. Oath. Compensation.

764. The members of sectional school boards shall be residents of the ward from which they are chosen. They shall, before entering upon the duties of their office, take the oath of office required of school officials under the laws of this Commonwealth.

They shall serve without compensation.⁸

Vacancies.

765. Vacancies caused by death, resignation or otherwise, shall be filled by a majority of the surviving directors, until the next ensuing annual municipal election, when the electors shall fill such vacancy or vacancies for the unexpired term or terms.⁹

Duties and powers of school boards.

766. The duties and powers of the sectional school boards shall be the following : In their respective wards or districts they shall visit, at least once in every quarter, all the schools therein, and inspect the same. They shall without delay call the attention of the board of public education, or of the appropriate executive officer of the board, to every matter requiring official action.¹⁰

6. Act April 22 1905, Sec. 2, P. L. 267.

7. Act April 22, 1905, Sec. 2, P. L. 267.

8. Act April 22, 1905, Sec. 2, P. L. 267.

9. Act April 22, 1905, Sec. 2, P. L. 267.

10. Act April 22, 1905, Sec. 2, P. L. 267.

Report. Organization.

767. They shall also make an annual report in writing to the board of public education, in respect to the condition of the schools and the wants of the section, especially in regard to the number, equipment and efficiency of schools and school buildings. They shall organize on the second Monday immediately succeeding their election, at such place as shall be designated by the board of education, by choosing a chairman and such other officer as they may agree upon, including a secretary.¹¹

Secretaries.

768. The secretary of each sectional school board shall receive annually such salary, not to exceed one hundred (\$100.00) dollars, as shall be determined by the board of public education.¹²

Agents.

769. The executive work of the board of public education shall be committed to three expert agents, who shall be appointed by said board and shall be subject to removal at the pleasure of the board. Said agents shall be a superintendent of schools, a superintendent of buildings, and a superintendent of supplies. Said agents shall be paid such compensation as shall be determined by the board of public education. They shall be responsible to the board for the conduct of their respective departments; shall make annual reports to the board, and shall, from time to time, submit such plans and suggestions for the improvement of the schools and the school system as the board of public education may require, or as they shall deem expedient.¹³

Superintendent of schools and district superintendents.

770. Supervision of all matters pertaining to instruction, in all the schools under the board of public education, shall be vested in a superintendent of schools and such number of associate superintendents as may be deemed necessary. The superintendent shall have a seat in the board,

11. Act April 22, 1905, Sec. 2, P. L. 267

12. Act April 22, 1905, Sec. 2, P. L. 267

13. Act April 22, 1905, Sec. 2, P. L. 267.

and the right to speak on all matters before the board, but not to vote. District superintendents may be appointed by the board of public education, on the nomination of the superintendent. They shall receive such compensation as the board of public education shall determine. They shall be under the supervision and direction of the superintendent of schools, and shall be assigned by him to administrative districts. They shall inquire into and supervise all matters relating to the government, courses of study, methods of teaching, discipline, and conduct of all the schools in their respective districts, and shall report the same, when required to the superintendent of schools and to the sectional school boards of their respective districts. The district superintendent of a district shall have a seat in each sectional school board of his district, and the right to speak, but not to vote, nor shall he hold office in said boards.¹⁴

Qualifications of applicants.

771. The board of public education of each school district of the first class shall prescribe the mode or modes of determining the qualifications of applicants for positions as teachers in the schools of the district; and shall designate the kinds or grades of licenses or certificates of qualification to teach which may or shall be used in the district, together with the scholastic and professional qualifications required for each kind or grade of license or certificate.¹⁵

License or certificate.

772. No license or certificate shall be granted to any person who is not of good moral character, nor to any person who shall not have first presented a certificate from a physician recognized by the board as competent for the purpose, setting forth that said applicant is neither mentally nor physically disqualified by any chronic or acute physical defect from successfully performing the duties of a teacher.¹⁶

Eligible lists. Appointments.

773. Eligible lists, properly classified, containing the names of persons who have received licenses or certificates of

14. Act April 22, 1905, Sec. 4, P. L. 269.

15. Act April 22, 1905, Sec. 5, P. L. 269.

16. Act April 22, 1905, Sec. 5, P. L. 269.

qualification to teach and arranged as nearly as possible in the order of rank in standing, shall be kept in the office of the superintendent of schools, and shall be open to inspection by members of the board of public education, associate and district superintendents, and sectional school boards. Except as superintendent of schools, associate superintendent, district superintendent, or director of a special branch, or as principal or teacher, in a training school, normal school, high school, school or manual training school, or in the case of promotion or transfer from any position to another or higher position, no person shall be appointed to any educational position whose name does not appear among the three highest names upon the proper eligible list.¹⁷

Proviso.

774. No teacher now in position in any city of the first class shall be displaced by the provisions of this section.¹⁸

Teachers' retirement fund.

775. A teachers' retirement fund may be created by the board of public education, and shall be by them administered. The said fund shall consist of all funds available for like purposes at the time of the enactment of this law, together with such additions thereto as the board may from time to time prescribe, and such moneys as may be donated or bequeathed for such purposes. Any teacher, principal or supervising official retired by the board of public education shall receive, from the said fund, such annuity as the board of public education may prescribe.¹⁹

Superintendent of buildings.

776. A superintendent of buildings shall be appointed by the board of public education, as hereinbefore provided, and shall give such security for the faithful performance of the duties of his office as the board of public education shall prescribe. He shall be an engineer or architect, of good standing in his profession, and shall be responsible for the condition and care of all school buildings and premises.²⁰

17. Act April 22, 1905, Sec. 5, P. L. 269.

18. Act April 22, 1905, Sec. 5, P. L. 269.

19. Act April 22, 1905, Sec. 6, P. L. 270.

20. Act April 22, 1905, Sec. 7, P. L. 270.

Deputies.

777. He may appoint such deputies and other assistants as shall be authorized by the board of public education. All plans for new school construction, additions, or repairs shall be approved by the superintendent of buildings and the superintendent of schools before submission to the board of education for approval and passage.²¹

Janitors.

778. Janitors for buildings devoted to elementary education shall be appointed by the sectional school boards. Janitors for school buildings other than those devoted to elementary education, provided by the regular graded course of study, shall be appointed by the board of public education. Said janitors shall receive such compensation as the board of public education may determine, and shall discharge their duties under the direction and to the satisfaction of the superintendent of buildings. They shall hold their positions at the pleasure of the board of education: Provided, however, That janitors now employed in schools within the limits of said cities of the first class shall not, save for cause, be displaced by the provisions of this section.²²

Superintendent of supplies. Assistants.

779. A superintendent of supplies shall be appointed by the board of public education, as hereinbefore provided, and shall give such security for the faithful performance of the duties of his office as the board of public education shall prescribe. He shall purchase and shall have the care and distribution of all supplies needed for the schools, under such regulations as the board of public education shall prescribe. He may appoint such assistants as shall be authorized by the board.²³

Appropriation for school purposes. Expenditures.

780. Councils of said city of the first class shall annually appropriate a sum for school purposes, which shall

21. Act April 22, 1905, Sec. 7, P. L. 270.

22. Act April 22, 1905, Sec. 7, P. L. 270.

23. Act April 22, 1905, Sec. 8, P. L. 270.

be not less than five (5) mills on each dollar of the total assessment of real property of said school district, upon which the tax rate for the succeeding year is fixed. All the moneys raised shall be appropriated by the councils to and for such purposes as to them shall seem best, and said moneys shall not be expended by said board for any other purposes, nor for any one purpose, in a greater amount than shall be authorized by councils ; and no moneys shall be drawn from the city treasury except by due process of law, or upon warrants on the treasurer through duly authorized officers of the board of public education, and countersigned by the city controller, which shall state the particular item to which the same is chargeable.²⁴

The board to be a corporation. Titles.

781. The board shall have complete power to administer all money or moneys appropriated or available for its use, as hereinbefore provided, and to enter into and execute contracts, and for these purposes shall possess the powers and privileges of a corporation of the first class. The title to all property now held or that may hereafter be acquired for school or educational purposes, in the said school district of the first class, shall be vested in said city of the first class ; but all such property shall be under the exclusive care and control of the board of public education.²⁵

Powers, rights, etc.

782. The board of public education in each school district of the first class shall succeed to, and shall have and possess, all the powers, rights and privileges, not inconsistent with this act, which the present existing board of public education in its respective district now lawfully has. Until the board of public education herein provided shall organize under the provisions of this act, the existing laws relating to the school district of the first class shall be in full force and effect.²⁶ All acts or portions of acts now in force so far as they are inconsistent herewith are hereby repealed.²⁷

24. Act April 22, 1905, Sec. 9, P. L. 271.

25. Act April 22, 1905, Sec. 9, P. L. 271.

26. Act April 22, 1905, Sec. 10, P. L. 271.

27. Act April 22, 1905, Sec. 11, P. L. 271.

Cities may establish institutions for scientific and educational instruction. Acquisition of property. Trustees.

783. The city councils of any city, with the approval of the mayor or recorder thereof, may establish in such city institutions authorized to collect and hold certain educational and economic collections, the object of each being the scientific, educational and economic instruction of the public concerning commerce, manufacturing, mining and agriculture; said institutions to have power to purchase or accept by gift any real estate, money or personal property necessary for their use and promotion, and power to use, convey or transfer the same, as if they were bodies corporate, to be governed by boards of trustees, nominated, appointed and confirmed in such manner as the city councils may determine.^{28 a}

Public health.

784. All departments of health of the cities of the first class of this Commonwealth shall have full power, and shall make, immediately after this act shall become a law, such rules and regulations, which in their judgment may be proper and necessary, for the protection of the public health, and amend or alter the same, from the diseases known as cholera, yellow, malarial, typhoid, typhus, scarlet, puerperal and relapsing fevers, small-pox, (variola or varioloid), chicken-pox (varicella), diphtheria, diphtheritic and membranous croups, cerebro-spinal meningitis, measles, mumps, whooping-cough, tuberculosis (in any of its diverse forms), pneumonia, erysipelas, plague (Bubonic), trachoma, leprosy, tetanus, glanders, hydrophobia (rabies) and anthrax.²⁹

Rules and regulations.

785. Rules and regulations shall cover and include :

(a) The reports to be made by physicians or other persons, in attendance upon any person afflicted with any of the said diseases, to said health authorities.

28. Act April 25, 1903, Sec. 1, P. L. 314.

a This act is an example of the evolution of the legislative conception of the purpose of municipal government. What connection the latter has with mining and agriculture is not clearly apparent.

29. Act April 20, 1905, Sec. 1, P. L. 228.

(b) The quarantining and disinfecting of persons and premises, and the placarding of notices.

(c) The treatment or disposal of infected bedding, clothing, or other articles.

(d) The care and burial of the bodies of persons who may have died from any of the said diseases, fixing the limit of time for burial, the methods to be used, the attendance of persons, and the style of advertising the funeral.

(e) The disinfection of conveyances used in the burial of persons who may have died from said diseases, which may have been used by a person afflicted with any of said diseases or person who may have been in contact with the same.

(f) The admission and attendance of persons at public or private schools, hospitals and asylums, or any other public or private educational or charitable institutions, and the compulsory vaccination and revaccination of inmates thereof, and of persons attending the same, or employed therein as physicians, teachers, nurses, or in any other capacity.³⁰

Publicity.

786. All rules and regulations and all changes and amendments, when adopted, shall be printed and distributed for public use ; copies of the same shall be filed with the state board of health. Copies shall be prepared and furnished to every educational institution, public or private, and to every physician and undertaker, within the jurisdiction of the health authorities promulgating the same.³¹ All acts or parts of acts inconsistent with this act are hereby repealed.

Election of teachers.

787. The board of public education of the city of Philadelphia has the right to prescribe the qualifications of all teachers, and to classify or grade them in accordance therewith, in such manner and by such tests as the board in its discretion may deem best for the interest of the public school system of the district ; and in determining the qual-

30. Act April 20, 1905, Sec. 2, P. L. 228.

31. Act April 20, 1905, Sec. 3, P. L. 228.

ifications of teachers for different kinds of schools, the board may take into consideration the question of sex.

The board of education of the city of Philadelphia may determine that male teachers only shall be principals of certain classes of schools, and in doing so they do not violate the provisions of Article X., Sec. 3, of the constitution of Pennsylvania, that "women twenty-one years of age and upwards shall be eligible to any office of control or management under the school laws of this state;" because the position of teacher is not an "office of control or management" within the meaning of the constitution.

The sectional school boards in the city of Philadelphia have the right to select from the classes of teachers established by the board of education the individuals to fill the required positions in their several sections, and to certify the names of the persons so selected, whether as principals or assistant teachers, to the board of education. The board of education then has the right to inquire whether the person so certified is a qualified member of the class from which the particular position should be filled, and, if so, it is charged with the duty of certifying the name and position to the city controller. The latter duty is ministerial and imperative, but it only arises after the board has ascertained, in pursuance of its right of inquiry, that a proper occasion is presented for its performance.³²

32. Commonwealth vs. Board of Education, 187 Pa. 70, 1898.

CHAPTER XXXIII.

COMMON SCHOOL EDUCATION IN CITIES OF THE SECOND CLASS.

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Members of school boards forbidden to hold office of emolument or to be employed by school boards.

788. It shall be unlawful for any director or any member of the board of control of school districts in any city of the second class within this Commonwealth, to hold the office of secretary of said board, or be employed by said board, while a member thereof, in any capacity in which any compensation is attached.¹

Repeal.

789. All laws or parts of laws inconsistent herewith are hereby repealed.²

Powers of directors of sub-school districts.

790. The several boards of directors of the sub-school districts of cities of the second class shall have the power to purchase lots of ground, to erect, enlarge, and repair school buildings thereon, to purchase furniture, apparatus, books, stationery, and fuel, and to pay janitors in their respective districts, and to borrow money, and provide for the payment thereof, with its interest, and to levy taxes for such purposes, as fully as such power existed and belonged to said boards, prior to the passage of the act, entitled "An act in relation to cities of the second class, providing for the levy, collection, and disbursement of taxes," approved the twenty-second day of March, Anno Domini one thousand eight hundred and seventy-seven.³

1. Act May 10, 1893, Sec. 1, P. L. 34.

2. Act May 10, 1893, Sec. 2, P. L. 34.

3. Act May 24, 1881, Sec. 1, P. L. 29.

Repeal.

791. All laws or parts of laws, inconsistent with this act, are hereby repealed, so far as the same relates to cities of the second class.⁴

Mechanic arts.

792. In every city of the second class the central board of education, and in every city of the third class the board of school controllers, and in every borough and township of the first class the board of school directors shall have power to establish and maintain one or more schools for the instruction of pupils in the useful branches of the mechanic arts, athletics and kindred subjects, to provide the necessary buildings, machinery, apparatus and materials, and to employ teachers and instructors therefor.⁵

Change of text books restricted in cities of second class.

793. Price lists of books to be furnished and adopted. Awarding of contracts. Penalty for violation of act. Act to be accepted.⁶

Cities May establish institutions for scientific and educational instruction. Acquisition of property. Trustees.

794. The city councils of any city, with the approval of the mayor or recorder thereof, may establish in such city institutions authorized to collect and hold certain educational and economic collections, the object of each being the scientific, educational and economic instruction of the public concerning commerce, manufacturing, mining and agriculture; said institutions to have power to purchase or accept by gift any real estate, money or personal property necessary for their use and promotion, and power to use, convey or transfer the same, as if they were bodies corporate, to be governed by boards of trustees, nominated, appointed and confirmed in such manner as the city councils may determine.⁷

4. Act May 24, 1881. Sec. 2, P. L. 29.

5. Act March 24, 1905, Sec. 1, P. L. 51.

6. See *Supra* TEXT BOOKS AND SCHOOL SUPPLIES Sec. 668, 669, 670, 671.

7. Act April 25, 1903, Sec. 1, P. L. 314.

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Classification of cities.

795. That for the purposes of legislation, regulating their municipal affairs, the exercise of certain corporate

powers and having respect to the number, character, powers and duties of certain officers thereof, the cities now in existence and those hereafter created in this commonwealth, shall be divided into three classes :

Those containing a population of one million or over shall constitute the first class.

Those containing a population of one hundred thousand and under one million shall constitute the second class.

Those containing a population under one hundred thousand, shall constitute the third class.¹

The classification of said cities respectively shall be ascertained and fixed by reference to their population according to the last preceding United States census, and whenever it shall appear by any such census that any city of the second or third class has attained a population entitling it to an advance in classification as herein prescribed, it shall be the duty of the governor, under the great seal of this commonwealth, to certify the fact accordingly, which certificate shall be entered at large upon the minutes of the councils of such city, and recorded in the office for recording the deeds of the proper county.

At the municipal election occurring not less than one month after the date of such certificate, the proper officers shall be elected to which the said city will become entitled under the change in classification, and upon the first Monday of April next ensuing, the terms of all officers of said city then in office whose offices are superseded by reason thereof shall cease and determine, and the city government shall be duly organized, and shall thereafter be controlled and regulated by the laws of this commonwealth applicable to the same under the classification hereby fixed and appointed.²

1. Act June 25, 1895, Sec. 1, P. L. 275.

2. Act June 25, 1895, Sec. 2, P. L. 275.

Cities of the third class to constitute a separate school district.

796. Every city of the third class shall constitute a separate school district³ which shall be known and designated as a school district of the third class,⁴ and all the property therein shall be the common property of said district.⁵

Powers of controllers.

797. The members of the board of school controllers for the time being shall have the power to levy and collect taxes, and the same rights and powers in relation to real and personal property as is now by law conferred upon the school directors of the several districts of this Commonwealth, and they shall govern and manage the public schools in the manner now provided by law for the maintenance of a system of education by common schools.⁶

Election of controllers. Terms.

798. The qualified voters of each ward of each of said cities on the third Tuesday in February next succeeding the issuing of letters patent to said city, [shall] elect two members of the board of school controllers of said district, one to serve for the period of two years, and one to serve for the period of four years, and every two years thereafter the qualified voters of each of said wards shall elect one person to serve for the term of four years.⁷

3. A territory annexed to a city of the third class, comprising one school district, is to constitute part of such district. Act June 23, 1895, Sec. 1, P. L. 239.

Note—The act of June 3, 1905, P. L. 142, prescribed a mode of adjusting the value of real estate belonging to the respective portions of school districts enlarged by the annexation of a part of a township and the apportionment of the debt or surplus between them.

4. Act April 22, 1905, Sec. 1, P. L. 272.

5. Act June 16, 1891, Sec. 1, P. L. 306.

6. Act June 16, 1891, Sec. 1, P. L. 306.

7. Act June 16, 1891, Sec. 1, P. L. 306. The vacancy is to be filled temporarily by appointment of the board, but the successor is to be chosen at the next succeeding municipal election.

Commonwealth vs. Evans, 102 Pa. 394, 1883.

The act of May 4, 1905, P. L. 388, provides, among other things, for the increase of the number of school directors by the court of common pleas, upon the petition of the councils.

See *Supra* ELECTION OF DIRECTORS; FILLING OF VACANCIES, Sec. 79, 80, 81.

Vacancies, how filled.

799. All vacancies which may happen in the said board as hereby constituted shall be filled in the manner as is now provided by law for vacancies in school boards.⁸

Annual organization of board. Officers.

800. The board of controllers shall annually, on the Thursday succeeding the municipal election, meet and organize by choosing a president and secretary, who shall be members of the board.⁹

Vacancies in offices of board.

801. In case of any vacancy in any of the said officers by death, resignation or otherwise, such vacancy shall be forthwith filled by said board of control for the remainder of the school year.¹⁰

Salary of the secretary.

802. The secretary shall receive such salary as the board may determine.¹¹

Bond of secretary. Amount. Condition.

803. Every secretary of the board of school control, in cities of the third class within this Commonwealth, shall be required, before entering upon his duties, to give a bond, with two approved sureties, in the sum of two thousand dollars, conditioned for the faithful performance of the duties of the office and the proper accounting for all money, books and vouchers that may come into his possession.¹²

Election of two controllers for the same term.

804. In all cases where two members of said board are required to be elected to serve for the same term, each of said qualified voters shall vote for one person as a member of said board of school controllers for said term, and the two persons having the highest number of votes shall be declared to be elected.¹³

8. Act June 16, 1891, Sec. 1, P. L. 306.

9. Act June 16, 1891, Sec. 1, P. L. 306.

10. Act June 16, 1891, Sec. 1, P. L. 306.

11. Act June 16, 1891, Sec. 1, P. L. 309.

12. Act June 25, 1885, Sec. 1, P. L. 173.

13. Act June 16, 1891, Sec. 1, P. L. 306.

Vacancies for unexpired terms.

805. When a vacancy or vacancies shall occur in the office of school controller, by death, resignation, or in any other manner than by the expiration of the term for which any school controller shall be elected, so that more than two school controllers must be elected at the succeeding municipal election in any ward of said city.¹⁴

For whom electors shall vote. Tickets to designate term.

806. The qualified voters of such ward, in addition to the one school controller to be voted for by each elector to serve four years, shall vote for one person to fill each of such unexpired terms by designating upon the ticket to be voted the number of years for which such school controller is elected, and each elector shall vote for but one person to fill such unexpired term.¹⁵

Case of two or more vacancies.

807. If there be two vacancies for the same term, then the two candidates having the highest number of votes shall be declared elected; and if there should be but one vacancy for any unexpired term, then the candidate having the highest number of votes for said term shall be declared elected.¹⁶

Proviso. Election of controllers in cities of fifteen or more wards.

808. In cities of the third class of fifteen wards or more, each ward shall elect but one controller; those elected from even numbered wards at said first election to serve two years, and those from odd numbered wards for four years; thereafter, every two years, alternately, they shall elect one each to serve for four years.¹⁷

Proviso. Act not applicable in certain respects to cities of the third class constituting one school district.

809. The provisions of this act shall not be applicable to the election of directors or controllers of the public schools, to the organization of the school board, to the

14. Act June 16, 1891, Sec. 1, P. L. 306.

15. Act June 16, 1891, Sec. 1, P. L. 306.

16. Act June 16, 1891, Sec. 1, P. L. 306.

17. Act June 16, 1891, Sec. 1, P. L. 306.

election of school treasurer or of any other officer of said board, to the receiving and collection of school taxes in any city of the third class constituting one school district.¹⁸

Districts may retain old laws governing them upon certain conditions. Certificate of non-acceptance to be filed.

810. The said district shall be governed by laws heretofore enacted, applicable to the same, if the acceptance of this act, required by the 57th section hereof, shall be accompanied by a certificate from the school district, signed by the proper officers thereof, expressing its desire to retain the laws governing it independent of this statute, otherwise this act shall govern the same.¹⁹

Proviso. Boards may accept provisions of the Act of June 16, 1891, P. L. 306.

811. It shall be lawful for such board, in its discretion, by a vote of its members as aforesaid, from time to time, to accept any of the provisions of this act regulating school matters, and after such acceptance, duly recorded on the minutes of said board, said provisions so accepted shall be the law of such district.²⁰

Effect of the Act June 16, 1891, as to repeal.

812. This act shall not operate to repeal any act or part of an act heretofore passed, except in so far as the same may affect the representation in boards of school controllers in cities of the third class.²¹

Members of school boards prohibited from holding the office of secretary thereof.

813. That from and after the passage of this act, it shall not be lawful for any director or member of the board of

18. Act June 16, 1891, Sec. 1, P. L. 306.

19. Act June 16, 1891, Sec. 1, P. L. 306.

20. Act June 16, 1891, Sec. 1, P. L. 306.

21. Act June 16, 1891, Sec. 2, P. L. 306.

Note—The above Act of 1891 is an amendment to section 41 of the municipal Act of May 23, 1874, P. L. 254. The Act of May 23, 1889, P. L. 274, "constituting each city of the third class a single school district, providing for the election of its school controllers, the levy and collection of taxes and management of its affairs," was held to be unconstitutional in *Commonwealth vs. Reynolds*, 137, Pa. 389. The Act of 1891 is constitutional. *Commonwealth vs. Gilligan*, 191 Pa. 504. See also *Commonwealth vs. Guthrie*, 203 Pa. 204; *Commonwealth vs. Middleton*, 210 Pa. 582, 1905.

school control, in any city of the third class, within this Commonwealth, to hold the office of secretary of said board, or to be employed by said board, while a member thereof, in any capacity in which there is any compensation attached.²²

Wilfully drawing warrant for payment of persons employed contrary to the act, declared a misdemeanor.

814. Any officer wilfully drawing any warrant, or passing any voucher, for the payment of any person elected, or employed contrary to the provisions of section one of this act, shall be guilty of a misdemeanor, and on conviction thereof be punished by a fine not exceeding one thousand dollars, and imprisonment not exceeding one year, or both, or either, at the discretion of the court.²³

Oath of controllers. Form of oath. Copy to be filed.

815. All persons elected to the office of school director, after the passage of this act, in the Commonwealth of Pennsylvania, shall, before entering upon the duties of such office, shall take and subscribe to an oath or affirmation, that he will support the constitution of the United States and the constitution of the Commonwealth of Pennsylvania and the laws thereof; that he has used no unlawful means to procure his election to said office, and that he will discharge the duties of said office, for the district in which elected,

22. Act June 11, 1885, Sec. 1, P. L. 108.

Note—This section is valid. *Commonwealth vs. Baker*, 13 D. R. 448, 1904. The 1st section of the act of June 11, 1885, P. L. 108, prohibiting any member or director of the board of school control in any city of the third class to hold the office of secretary of said board, or to be employed by said board while a member thereof in any capacity to which there is any compensation attached, does not violate Art. III, sec. 7, of the Constitution of Pennsylvania, prohibiting special and local legislation.

There is no constitutional objection to the classification of school districts.

Commonwealth ex rel. Mizener vs. Baker, 13 D. R. 448, 1904.

Sugar Notch Borough, 192 Pa. 349, 1899.

Commonwealth vs. Gilligan, 195 Pa. 504, 1900.

City of Erie School District vs. Smith, 195 Pa. 515, 1900.

Commonwealth vs. Howell, 195 Pa. 519, 1900.

Commonwealth vs. Guthrie, 203 Pa. 209, 1902.

23. Act June 11, 1885, Sec. 2, P. L. 108.

faithfully and impartially, and to the best of his understanding and ability ; which oath or affirmation shall be taken before a justice of the peace, notary public or some other officer authorized to administer oaths,* and a copy of the same shall be entered upon the minutes of the board of school directors of the proper district.²⁴

Controllers may administer oath to each other.

816. On and after the passage of this act it shall be lawful for school directors in the various school districts in this Commonwealth to qualify each other, by oath or affirmation, that they will faithfully discharge the duties of said office, and that they be authorized to certify the same to the proper authorities.²⁵

Secretary to qualify president.

817. In the organization of a school board it shall be the duty of the person chosen to act as secretary to qualify the person chosen to act as president, and the president in turn shall qualify all the other members of said board.²⁶

School treasurer.

818. The city treasurer shall ex-officio be school treasurer, and before entering upon the duties of his office shall give bond to the school directors conditioned for the faithful performance of his duties, in such amount as the board shall direct, and with such sureties as shall [be] by them approved, and shall also before he enters upon his office, take and subscribe an oath or affirmation of like nature as is hereinbefore prescribed for the city treasurer.²⁷

Separate office of school treasurer in cities of the third class was not abolished by act of May 23, 1874. Additional compensation.

819. The municipal corporations act of May 23, 1874, P. L. 230, by section 42 of which it is provided that the city treasurer shall ex-officio be school treasurer in cities of

* See *Infra*, 816, 817.

24. Act April 16, 1891, Sec. 1, P. L. 22.

25. Act June 25, 1895, Sec. 1, P. L. 284.

26. Act June 25, 1895, Sec. 2, P. L. 284.

27. Act May 23, 1874, Sec. 42, P. L. 256. This act is constitutional. Commonwealth vs. Middleton, 210 Pa. 582, 1905.

the third class, does not abolish the office of school treasurer as a separate office in such cities.

The city treasurer, in addition to his salary as such, is entitled, under the act of May 8, 1854, P. L. 617, to such compensation for his services in the capacity of school treasurer as the board of school controllers may determine, not exceeding two per centum of the school taxes collected.

When the school board have refused to fix any compensation for the treasurer, he does not become in default upon his official bond, by retaining at the end of his term the amount of the maximum commission allowable under said act of 1854, and holding the same to await action by the board fixing his commission.²⁸

City treasurers shall be the collectors of all the city, school and poor taxes.

820. That the several city treasurers, hereafter elected in cities of the third class of this Commonwealth, by virtue of their office shall be the collectors of all the city, school and poor taxes, assessed or levied in their respective cities, and shall perform the duties and be subject to the hereinafter provisions of this act.²⁹

Mechanic art schools. Athletics.

821. In every city of the second class the central board of education, and in every city of the third class the board of school controllers, and in every borough and township of the first class the board of school directors, shall have power to establish and maintain one or more schools for the instruction of pupils in the useful branches of the mechanic arts, *athletics* and kindred subjects, to provide the necessary buildings, machinery, apparatus and materials, and to employ teachers and instructors therefor.³⁰

Change of text books restricted in cities of the third class.

822. Price lists of books to be furnished and adopted.

Awarding of contracts.

Penalty for violation of act. Act to be accepted³¹

28. Scranton School District vs. Simpson et al., 133 Pa. 202, 1890.

29. Act June 20, 1901, Sec. 1, P. L. 578.

30. Act March 24, 1905, Sec. 1, P. L. 52.

31. See *Supra*, TEXT BOOKS AND SCHOOL SUPPLIES, Sec. 668, 669, 670, 671.

School taxes. To be levied on city assessment.

823. In cities of the third class where the school district comprises the same territory as the city, the taxes for school and school building purposes shall be levied on the assessment made for city purposes.³²

Certification of assessment to board.

824. The city clerk or other competent person authorized by city council shall make, for the use of the school board, a true copy of the completed assessment, and shall duly certify the same to the said board.³³

Repeal.

825. All acts or parts of acts inconsistent herewith are hereby repealed.³⁴

Cities may establish institutions for scientific and educational instruction. Acquisition of property. Trustees.

826. The city councils of any city, with the approval of the mayor or recorder thereof, may establish in such city institutions authorized to collect and hold certain educational and economic collections, the object of each being the scientific, educational and economic instruction of the public concerning commerce, manufacturing, mining and agriculture; said institutions to have power to purchase or accept by gift any real estate, money or personal property necessary for their use and promotion, and power to use, convey or transfer the same, as if they were bodies corporate, to be governed by boards of trustees, nominated, appointed and confirmed in such manner as the city councils may determine.³⁵

Sinking fund for payment of funded debt. Rate of tax therefor. Application of tax.

827. For the purpose of creating a sinking fund for the gradual extinguishment of the bonds and funded debt of the

32. Act May 25, 1897, Sec. 1, P. L. 85.

33. Act May 25, 1897, Sec. 2, P. L. 85.

34. Act May 25, 1897, P. L. 85. *Note*—This act is constitutional, and applies to cities of the third class whether, it seems, such cities have accepted the school provisions of the act of May 23, 1874, or not. *Erie School District vs. Smith*, 195 Pa. 515, 1900.

35. Act April 25, 1903, Sec. 1, P. L. 314.

respective school districts in the cities of this Commonwealth, the school controllers of each thereof shall annually (until payment of the bonds and funded debt be fully provided for) levy and collect a tax of not less than one mill, and not exceeding three mills, upon the assessed value of the taxable property of each of said cities, which shall be paid into the school treasury, and shall be applied towards and extinguishment of said bonds, and funded debt, in the order of priority of the date of its issue, and to no other purpose whatever : Provided, That the whole tax of such school district for any one year shall not exceed the entire rate now allowed by law for school and building purposes.^{36 a}

36. Act May 23, 1874, Sec. 44, P. L. 256. *a* See title INDEBTEDNESS, *Supra* Sec. 346, for acts governing the manner of increasing the indebtedness of school districts. Numerous acts, some applying to school districts in cities of the third class, and some to school districts in general, authorize the funding of existing indebtedness. The Acts of May 19, 1897, P. L. 76 (*Supra*, Sec. 364), and May 25, 1897, P. L. 91, validate the indebtedness of such municipalities insured in excess of two per centum and less than seven per centum of the assessed valuation, or under an irregular form of election ballot.

The Act of May 7, 1885, P. L. 15, see *Supra* CITY AND BOROUGH SUPERINTENDENTS, Sec. 676, authorized the election triennially, on the first Tuesday of May, by the school directors of any city, borough or township having a population of over five thousand inhabitants, of a superintendent, whose duties are such as are prescribed by Secs. 7-10 of the Act of April 9, 1867, P. L. 53. See *Supra* CITY AND BOROUGH SUPERINTENDENT, Sec. 676, 677, 678, 679.

CHAPTER XXXV.

STATE NORMAL SCHOOLS.

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Normal school districts.

828. For the purposes of the following act, the counties of Delaware, Chester, Bucks, and Montgomery, shall form

the first normal school district ; Lancaster, York and Lebanon, the second ; Berks, Schuylkill and Lehigh, the third ; Northampton, Carbon, Monroe, Pike, Luzerne and Wayne, the fourth ; Wyoming, Sullivan, Susquehanna, Bradford, Lycoming and Tioga, the fifth ; Dauphin, Northumberland, Columbia, Montour, Union, Snyder, Perry, Juniata and Mifflin, the sixth ; Cumberland, Adams, Franklin, Fulton, Bedford, Huntingdon and Blair, the seventh ; Centre, Clinton, Clearfield, Elk, Potter, McKean, Jefferson, Clarion, Forest and Warren, the eighth ; Cambria, Indiana, Armstrong and Westmoreland, the ninth ; Washington, Greene, Fayette and Somerset, the tenth ; Allegheny, Butler and Beaver, the eleventh ; and Lawrence, Mercer, Venango, Crawford and Erie, the twelfth.¹

Thirteenth normal school district erected.

829. The eighth normal school district of this Commonwealth, as provided by section 1 of the act of May 20, 1857,* be and the same is hereby divided ; and from this date, the said eighth normal school district shall consist of the counties of Centre, Clinton, Clearfield, Elk, Potter and Cameron, and the counties of Jefferson, Clarion, Forest, Warren and McKean shall constitute the thirteenth district.²

Establishment of normal schools.

830. When any number of citizens of this state, not less than thirteen, shall, as contributors or stockholders, erect and establish a school for the professional training of young men and women as teachers for the common schools of the state, in accordance with the provisions of this act, such school may become entitled to its benefits, in the manner hereinafter set forth : Provided, however, That not more than one such school shall, at the same time, become and continue to be entitled to such benefits in each of the foregoing normal school districts ; and that this act shall not take effect till at least four such schools, in as many different dis-

1. Act May 20, 1857, Sec. 1, P. L. 581.

* P. L. 581, *Supra* 828.

2. Act May 8, 1874, Sec. 1, P. L. 120.

tricts, shall have complied and been recognized in accordance with the provisions of this act ³

Management of normal schools by boards of trustees. Votes.

331. The pecuniary affairs of each of said schools shall be managed, and the general control exercised by a board of trustees, (whose officers shall be a president and secretary who shall, and a treasurer, who shall not, be members of said board), to be chosen by the contributors or stockholders on the first Monday in May annually; but no contributor or stockholder shall have more than five votes at the election of trustees; and no religious test or qualification shall be required, to entitle any one to become a contributor, stockholder, trustee, professor or student in any of said schools.⁴

Power of boards of trustees to receive, hold and use real and personal estate.

832. After the said schools shall have been recognized under the provisions of this act, it shall be lawful for them to receive, hold and use, under the direction of their trustees aforesaid, any devise, bequest, gift, grant or endowment of property, whether real or personal, which may be made to them; and the same shall be so applied by the trustees as shall, in the opinion of a majority of them, increase the efficiency and usefulness of the said schools, subject, however, to any terms, conditions or restrictions which may be attached to such devise, bequest, gift, grant or endowment, not inconsistent with the spirit and purposes of this act; and the said trustees shall have authority to bring suit in their name as trustees, and do all other things necessary for the recovery, use and application of the same.⁵

Trustees to make annual reports. Visitation.

833. The trustees of each of said schools, after being recognized under the provisions of this act, shall annually in the month of October furnish, under oath or affirmation of the president of the board of trustees, to the superintend-

3. Act May 20, 1857, Sec. 2, P. L. 581.

4. Act May 20, 1857, Sec. 3, P. L. 581.

5. Act May 20, 1857, Sec. 4, P. L. 581.

ent of common schools, a full account of its pecuniary condition, showing income and debts, if any, salaries and other expenses, and dividends declared, together with the number of students admitted and graduated, the branches taught, the apparatus procured, the improvements effected, and the changes made during the preceding year, and such other information as said superintendent of common schools may, from time to time, by his general circular to all of said schools, require to be furnished; and each of said schools shall always be open to the visitation and inspection of said superintendent of common schools, and of the county superintendents of all the counties within its normal school district.⁶

Suitable buildings and other requisites.

834. To entitle it to the benefits and privileges of this act, each of said normal schools shall possess the following requisites:

I. Suitable buildings as hereinafter provided, and an area of ground appurtenant thereto, of not less than ten acres in one tract, the whole of which shall be prepared and used as a place for gymnastic exercises and healthful recreation by students, except so much thereof as shall be necessarily occupied by the buildings, botanical and other gardens, and such other purposes as shall be plainly promotive of the great objects of the institution.⁷

Hall, lodging rooms and refectories.

835. II. The buildings shall contain a hall of sufficient size to comfortably seat at least one thousand adults, with class rooms, lodging rooms and refectories for at least three hundred students, all properly constructed and arranged as to light, heat and ventilation, so as to secure the health and comfort of the occupants, with proper provision for physical exercise during inclement weather.⁸

6. Act May 20, 1857, Sec. 5, P. L. 581, as amended by act April 11, 1862, Sec. 15, P. L. 475.

7. Act May 20, 1857, Sec. 6, P. L. 581.

8. Act May 20, 1857, Sec. 6, P. L. 581.

Library for use of students.

836. III. Each school shall contain a library room for the accumulation of books for the free use of the students, a cabinet for specimens and preparations, to illustrate the natural and other sciences, such apparatus and philosophical instruments as are indispensable for the same purpose.⁹

Professors.

837. IV. Each school shall have at least six professors of liberal education and known ability in their respective departments, namely:—One of orthography, reading and elocution; one of writing, drawing and book-keeping; one of arithmetic, and the higher branches of mathematics; one of geography and history; one of grammar and English literature, and one of theory and practice of teaching, together with such tutors and assistants therein, and such professors of natural, mental and moral science, languages and literature, as the condition of the school and the number of students may require.¹⁰

Principal.

838. V. The principal of each normal school shall be a professor of such one of the six indispensable branches as may be assigned to him by the trustees, and he shall be charged with the whole discipline and interior government of the school, in conformity with such regulations as shall, from time to time, be adopted by the trustees, and approved by the state superintendent of common schools.¹¹

Course of study.

839. A meeting of the principals of the several normal schools, for the purpose of fixing a general course of study, and arranging other matters coming within their jurisdiction as a body, shall be called at Harrisburg, by the superintendent of public instruction, whenever he shall deem it necessary, or upon a request so to do, made by three principals of state normal schools.¹²

9 Act May 20, 1857, Sec. 6, P. L. 581.

10. Act May 20, 1857, Sec. 6, P. L. 581.

11. Act May 20, 1857, Sec. 6, P. L. 581.

12. Act April 12, 1875, Sec. 10, P. L. 43.

Model schools.

840. VI. Each school shall have attached to it one or more schools for practice, or model schools, with not less than one hundred pupils from the children of the vicinity, and so arranged that the students of the normal school shall therein acquire a practical knowledge of the art of teaching under the instruction of their proper professors.¹³

Qualifications for admission.

841. VII. The qualifications for admission in, and the course and direction of the term of study in all the schools shall be such as shall be approved by and at a meeting of all the principals of the normal schools then recognized under this act; such meeting to be called from time to time, as he may deem expedient, by the state superintendent of common schools, and to take place at one or other of the annual examinations hereinafter provided for, except the first meeting, which shall be held at such time and place as he may indicate; and at such meetings, the act of the majority of the principals shall be binding on all the schools in reference to the qualification for admission and the course and term of study, when approved by the state superintendent of common schools.¹⁴

Text books.

842. VIII. The text books to be used in each of said schools shall be such as may be selected by its proper professors, with the approbation of the trustees thereof.¹⁵

Students admitted to schools on school district account. Examination.

843. IX. Each of said schools shall admit when required, and retain during the whole term of study, if so long they behave themselves well, one student annually, alternately male and female, from each common school district within the counties composing its normal district, at a cost of not more than five dollars each for the term or quarter of eleven weeks, to be paid in advance by the board of directors sending them; said students to be selected after public ex-

13. Act May 20, 1857, Sec. 6, P. L. 581.

14. Act May 20, 1857, Sec. 6, P. L. 581.

15. Act May 20, 1857, Sec. 6, P. L. 581.

amination by said directors from amongst those, if males, of the age of sixteen or upwards, and if females, of not less than fourteen years, who manifest a desire and a capacity to exercise the profession of teaching, preference being always given to those of the best moral character, most studious habits and greatest proficiency in knowledge, but no one to be so admitted unless proficient in all the studies required for entrance into the normal schools by their general regulations, adopted under Article VII.* of this section.¹⁶

Compensation from other students.

844. X. Students other than those admitted on district account, to pay such sum for tuition as the trustees shall determine ; but in the admission of such students the preference always to be given to such as are designed for the profession of teaching, and as between private and public students, a like preference to be given to the latter in case of insufficiency of room to accommodate all who apply, and no difference in the charge for boarding and lodging to be made in favor of any class of students.¹⁷

When pupils from school district may be instructed in normal schools. Payment of expenses. Minutes.

845. From and after the passage of this act it shall be lawful for the trustees of the state normal schools now within the Commonwealth of Pennsylvania, or that may hereafter be established within said Commonwealth, and the school directors of any school district to enter into an arrangement or agreement between such trustees and such school directors of such district by which the pupils of such school district, or any portion of them as may not be convenient to any school, may be instructed at any such state normal school, and the expense of such instruction shall be paid as may be agreed upon between the directors or controllers of such district and the trustees of any of said normal schools. Such action of the said school district or districts and the trustees of such state normal school shall

* *Supra* 841.

16. Act May 20, 1857, Sec. 6, P. L. 581.

17. Act May 20, 1857, Sec. 6, P. L. 581.

be entered, respectively, upon the minutes of the said respective boards.¹⁸

Admission of teachers from common schools.

846. XI. Teachers who shall have taught a common school in their proper normal district during a full school term of their common school district next preceding their application, may be admitted for any term not less than one month into their proper normal school, at a charge for instruction not to exceed two dollars per month, and shall pay the same price for boarding and lodging, if there be room for them, as other students, and shall have the same care and facilities for study in proportion to their advancement.¹⁹

Examinations of graduating classes. Board of examiners. Appointment of Board.

847. All examinations of the graduating classes at the normal schools shall be conducted by a board, of which the superintendent of public instruction or his deputy shall be president, of two principals of the normal schools, of whom the principal of the school where the students are to be examined shall be one, and not less than two nor more than six county, city, borough or township superintendents, to be appointed by the superintendent of public instruction.²⁰

Appropriation for expenses of board of examiners.

848. The expenses incurred by the members of the several boards of examiners shall be paid by the state, as provided by existing laws, and the sum of two thousand dollars, or so much thereof as may be necessary, shall be annually appropriated for that purpose.²¹ All acts or parts of acts inconsistent herewith are herewith repealed.^{21½}

Manner of holding examinations.

849. XII. The annual examinations shall take place in the presence of the superintendents of all the counties embraced in the proper normal school districts.²²

18. Act June 28, 1895, Sec. 1, P. L. 412.

19. Act May 20, 1857, Sec. 6, P. L. 581.

20. Act April 23, 1895, Sec. 1, P. L. 41.

21. Act April 23, 1895, Sec. 2, P. L. 41.

21½. Act April 23, 1895, Sec. 3, P. L. 41.

22. Act May 20, 1857, Sec. 6, P. L. 581.

Power to expel students attending school on district account.

850. XIII. The faculty of each normal school shall have the power to expel any student attending on district account for improper conduct, which expulsion and the cause of it shall forthwith be certified in writing by the principal to the directors of the district from which the expelled student was admitted, whereupon such directors shall have the right to supply the vacancy thus created.²³

Examinations of schools desiring to be admitted to the privileges of normal schools.

851. When the trustees of any school desirous of claiming the privileges of this act shall make application to the state superintendent of common schools, it shall be the duty of the superintendent of common schools, together with four other competent and disinterested persons, to be chosen by him, with the consent of the governor, and all the superintendents of the counties in the normal school district in which such school shall be situated, on receiving due notice from the department of common schools personally, and at the same time, to visit and carefully inspect such school; and if, after thorough examination thereof, and of its by-laws, rules and regulations and of its general arrangement and facilities for instruction, they or at least two-thirds of them shall approve the same, and find that they fully come up to the provisions of this act, in that case and in no other they shall certify the same to the department of common schools, with their opinions that such school has fully complied with the provisions of this act, as far as can be done before going into operation under this act; whereupon the state superintendent shall forthwith recognize such school as a state normal school under this act, and give public notice thereof in two newspapers in each county in the proper normal school district, and thenceforward this act shall go into full operation, so far as regards such school, without any further proceedings: Provided, however, As hereinbefore set forth, that no such notice shall be given until at least three other normal schools, in as many different normal districts, shall have been similarly inspected, approved

23. Act May 20, 1857, Sec. 6, P. L. 581.

and certified to the department of common schools ; and if upon due inspection any school so applying shall be found insufficient under this act, said board of inspectors shall so report to the superintendent of common schools, who shall thereupon inform the trustees thereof of such adverse report.²⁴

Proceedings where two or more schools make application. Visitation.

852. If two or more schools apply in the same district to be recognized under this act at the same time, all of them shall be visited in the manner prescribed by the next preceding section, and the one found to possess the largest and best accommodations and arrangements, to give effect to the purposes of this act, shall be preferred, and so certified if it fully come up to the requirements of this act ; and if two or more schools in the same district be found to possess equal accommodations and arrangements fully up to the requirements of this act, in that case the one nearest to the centre of the proper normal district shall be preferred, and certified for recognition to the department of common schools ; and if one or more of the schools thus applying for recognition give notice to the department of common schools, with reasonable assurance that it or they are not now ready for inspection under the seventh section of this act,* but will be within the term of six months from and after the date of such notice, in that case none of the applicant schools shall be inspected in such district till such time within said six months when all shall be prepared for inspection, when like proceedings shall take place as have been prescribed in the preceding part of this and the seventh section.²⁵

Examination of candidates for graduation. Certificates of scholarship.

853. The board of principals who shall examine the candidates for graduation in any of the normal schools under this act, shall issue certificates to be signed by all of them to all such students of the full course as two-thirds of

24. Act May 20, 1857, Sec. 7, P. L. 581.

* *Supra* 851.

25. Act May 20, 1857, Sec. 8, P. L. 581.

the board shall approve, setting forth expressly, the branches in which each have been found duly qualified, which certificates must embrace all the branches enumerated in the fourth article of the fifth section of this act,* including the theory but not including the practice of teaching, and may also embrace any additional branches in which the graduate was found proficient; actual teachers of common schools in good standing who shall produce satisfactory evidence of having taught in common [schools] during three full consecutive annual terms of the districts in which they were employed, may also be examined at the same time and in the same manner with the regular students of their proper normal school, and if found equally qualified, shall receive certificates of scholarship of the same kind.²⁶

Certificates. Effect thereof.

854. All the certificates granted under this section shall be received as evidence of scholarship to the extent set forth on the face of them, without further examination, in every part of the state.²⁷

When additional certificate may be granted.

855. Whenever the holder of any certificate under this section shall by study and practice, have prepared for examination in any branches of study additional to those in such certificate, he or she may attend the annual examination of the normal school of the district, and if found duly qualified, shall receive a new certificate, setting forth all the branches in which up to that time, he or she may have been found proficient; and thenceforth such enlarged certificate shall also be evidence of scholarship to the extent of it in every part of the state without further examination.²⁸

When certificates of graduation shall be issued. Proof required.

856. No certificate of competence in the practice of teaching shall be issued to the regular graduate of any of said normal schools, till after the expiration of two years from the date of graduation, and of two full annual terms

* *Supra* 837.

26. Act May 20, 1857, Sec. 9, P. L. 581.

27. Act May 20, 1857, Sec. 9, P. L. 581.

28. Act May 20, 1857, Sec. 9, P. L. 581.

of actual teaching in the district or districts in which such graduate taught, nor to any teacher who shall hold a full certificate of scholarship, without having been a regular student and graduate, unless upon full proof of three years actual teaching in a common school or schools, nor in either case without the production of a certificate of good moral conduct, and satisfactory discharge of the requisite duration of professional duty, from the board or boards of directors in whose employment the applicant shall have taught, countersigned by the county superintendent of the proper county or counties ; on the production of which proof and not otherwise, a full certificate of competence in the practice of teaching shall be added to the certificate of scholarship, and of theoretical knowledge of the science of teaching already possessed, to be received as full evidence of practical qualification to teach in any part of the state without further examination : Provided, however, That practical teachers who shall upon due examination, receive a certificate of scholarship, may at the same time receive a certificate in the practice of teaching, upon producing the required evidence of three years' previous experience in the art of teaching and of good moral conduct.²⁹

Normal school second diploma.

857. Under the act of May 20, 1857, the necessary two years of actual teaching must be in Pennsylvania before a second diploma can be granted to a graduate of a normal school. If students go into other states to teach, Pennsylvania received no direct benefit, although she has contributed liberally to their support. Of course, it is not within the power of the legislature to prevent graduates of our normal schools from going into other states to teach, but it can say that by so doing they forfeit the advantages which the law confers upon those teachers who give their services to our common schools.³⁰

Number of votes necessary to obtain a certificate or to graduate.

858. No person shall graduate at a state normal school or receive a state certificate as a practical teacher, unless by

29. Act May 20, 1857, Sec. 10, P. L. 581.

30. Teachers' Certificate, 16 Pa. C. C. 403.

the affirmative vote of four out of five members of the board of examiners.³¹

Provisional certificates. Degree of scholarship.

859. No temporary or provisional certificate nor certificate of any less degree of scholarship than that required by the ninth section of this act, shall be issued by said board of principals nor by the faculty of any of said schools, but the principal of each of said schools may certify in writing, to the length of time which teachers may have attended under the eleventh article of the sixth section of this act,* and the manner of their deportment while in attendance³²

Duty of students who graduate on district account.

860. The students who shall graduate on district account in any of said normal schools, shall be liable to devote the next three years after their graduation, to the exercise of their profession as teachers in the common schools of the district which defrayed the expense of their professional instruction, if so required by the respective boards of directors of such districts, and at the medium salary or compensation paid in such districts, and if not so required by their proper district, they shall devote said three years to the employment of teaching in the common schools of some other district or districts, at such salary as may be given therein; and each of said students before admission to the proper normal school, shall subscribe a written declaration of his or her intention to comply with the provisions of this section, which shall be deposited with the secretary of the board of directors of the proper common school district.³³

Duty of superintendent.

861. It shall be the duty of the superintendent of common schools to prescribe all forms and to give all instructions required for carrying this act into full effect on all points not herein set forth in detail.³⁴

31. Act May 12, 1875, Sec. 9, P. L. 43.

* *Supra* 846.

32. Act May 20, 1857, Sec. 11, P. L. 581.

33. Act May 20, 1857, Sec. 12, P. L. 581.

34. Act May 20, 1857, Sec. 13, P. L. 581.

When normal schools shall go into operation.

862. As soon as a normal school, such as is contemplated and described by the act³⁵ to which this is a supplement, shall be in full operation in any of the districts created by said act,³⁶ and shall have all the requisites, and have been visited, approved and recognized in the mode directed by said act, then said act shall go into operation as fully and effectually, in regard to said school, as if the four schools thereby required had been established and recognized: Provided, however, That not more than one school in each district shall be recognized under this act.³⁷

Requisites for the establishment of a normal school.

863. The requisites to entitle any school to the benefits of this act, or the one to which this is a supplement, as set forth in the sixth section thereof, are hereby altered in the following particulars, viz.: The pupils of the model school may or may not be from the immediate vicinity of the normal school with which it is connected, as in the discretion of the trustees thereof shall seem most expedient;³⁸ that the cost of the tuition of all classes of students, whether admitted on common school district account, private account, or whether they are actual school teachers, shall be fixed by the trustees of the several schools;³⁹ that the examination of students for graduation,⁴⁰ if only one school shall be in recognized operation, shall be by the faculty thereof: if two schools shall be in operation, it shall be by the principals of both; if three, it shall be by the principals of all, or at least two of them; and when more than three shall be in operation, the examination shall never be conducted by less than three principals, to be designated as prescribed by the twelfth paragraph of the sixth section of said act,⁴¹ of whom the principal of the school whose students are to be examined shall be one: And provided, That these examinations shall

35. Act May 20, 1857, P. L. 581.

36. *Supra*, 828-829.

37. Act April 15, 1859, Sec. 1, P. L. 680.

38. *Supra*, 840.

39. *Supra*, 843-844-845.

40. *Supra*, 847-848-849.

41. *Supra*, 849.

in all cases be conducted in the presence of the superintendent of common schools and the county superintendents of the proper district, if they desire to attend, upon receiving due notice ; that the certificate to graduates shall embrace such branches of learning, in addition to those of orthography, reading, writing, English grammar, geography and arithmetic, as shall be prescribed by the board of principals in accordance with the seventh paragraph of the sixth section of said act,⁴² or by the principal of the first school recognized, so long as only one shall be in operation ; and the certificate shall be signed by all the examiners, if less, and by at least two-thirds of them, if more than three, and also by the whole faculty of the proper school, in every case.⁴³

State trustees. Appointment.

864. The state superintendent shall appoint, on or before the first Monday of May, annually, two citizens of each normal school district in which a normal school is in operation, and which have received or shall receive any appropriation from the state, to act as trustees on the part of the state, with all the rights and privileges of other trustees in the boards of trustees of the several normal schools : Provided, That this act shall apply to such normal school associations as shall accept its provisions.⁴⁴

State appropriation.

865. For the support of the public schools and normal schools of this Commonwealth, for the two years commencing on the first day of June, one thousand nine hundred and five, the sum of eleven million one hundred thousand dollars.⁴⁵

Allowance to students who agree to teach in the common schools.

866. Out of the sum of eleven million one hundred thousand dollars hereby appropriated, there shall be paid for the education of teachers in the state normal schools the

42. *Supra*, 841.

43. Act April 15, 1859, Sec. 2, P. L. 680.

44. Act February 15, 1872, Sec. 1, P. L. 16.

45. Sec. 8 of the General Appropriation Act of 1905, P. L. 596.

sum of four hundred and seventy-five thousand dollars, to be applied as follows: For each student over seventeen years of age, who shall sign an agreement binding said student to teach in the common schools of this state two full annual terms, there shall be paid the sum of one dollar and fifty cents a week, in full payment of the expenses for tuition of said students.⁴⁶

Instruction of pupils drawing an allowance.

867. Each student in a state normal school drawing an allowance from the state must receive regular instruction in the science and art of teaching, in a special class devoted to that object, for the whole time for which such allowance is drawn; which amount shall be paid upon the warrants of the superintendent of public instruction.⁴⁷

Allowance of fifty dollars to graduates of normal schools.

868. To each student who, during the school year commencing on the first Monday of June, one thousand eight hundred and sixty-six, shall have graduated at any of the normal schools of the state, and who shall sign an agreement, binding said student to teach, in the common schools of the state, two full years, there shall be paid the sum of fifty dollars.⁴⁸

Graduates under seventeen years old not entitled to fifty-dollar allowance.

869. The allowance of fifty dollars to graduates of normal schools who agree to teach two years in the public schools cannot be paid to students who graduate under age of seventeen.⁴⁹

Trustees and their powers. Election and appointment.

870. The pecuniary and other affairs of each state normal school shall be managed by a board of eighteen trustees, twelve elected by the contributors or stockholders, and six appointed by the superintendent of public instruction.⁵⁰

46. Sec. 8 of the General Appropriation Act of 1905, P. L. 596.

47. Sec. 8 of the General Appropriation Act of 1905, P. L. 596.

48. Act April 11, 1866, Sec. 16, P. L. 73.

49. In re Normal School, 5 D. R. 501, 1896.

50. Act April 12, 1875, Sec. 1, P. L. 43.

Elections of trustees by contributors or stockholders.

871. The trustees on the part of the contributors or stockholders shall be elected from their own number, at a meeting to be held on the first Monday in May, annually.⁵¹

State trustees. Nomination and appointment.

872. The contributors or stockholders shall, at the annual meeting, select and nominate to the superintendent of public instruction twice as many persons as are to be appointed, from whom, if satisfactory to him, he shall appoint the required number to act in the board as trustees on the part of the state; but if the nominations so made be not satisfactory to the said superintendent of public instruction he shall, with the advice and consent of the governor, choose others deemed more suitable.⁵²

First election and appointment.

873. At the first annual meeting, after the passage of this act, of the contributors or stockholders of all normal schools now acting as state institutions, and at a meeting of the contributors or stockholders of all normal school associations applying to the proper authorities for recognition as state normal schools, twelve persons shall be elected trustees on the part of such contributors or stockholders, four to serve for one year, four for two years, four for three years; and thereafter only four persons are to be elected annually, to serve for three years; and at the same time, said meetings of contributors or stockholders shall nominate twelve persons to the superintendent of public instruction from whom, if satisfactory, or if not, as hereinbefore directed, he shall appoint two trustees to serve for one year, two for two years, two for three years; the nominations for all subsequent years being limited to four, and the appointments to two, to serve for three years.⁵³

Quorum.

874. Seven trustees shall be necessary to constitute a quorum to do business; and that after the approval pro-

51. Act April 12, 1875, Sec. 2, P. L. 43.

52. Act April 12, 1875, Sec. 3, P. L. 43.

53. Act April 12, 1875, Sec. 4, P. L. 43.

vided for in section seventh of the act of 1857,⁵⁴ all changes in by-laws and rules for regulating the proceedings of the board must be approved by the superintendent of public instruction.⁵⁵

Powers and privileges of the two classes of trustees.

875. The powers and privileges of the two classes of trustees in the board shall be the same; but it shall require a three-fourths vote of all the trustees present at any meeting of the board to pass any motion or resolution on which the yeas and nays are called.*⁵⁶

Meeting of board of trustees. Majority of trustees requisite to pass motions.

876. So much of the sixth section of the act to which this is a supplement,⁵⁷ as provides that it shall require a three-fourths vote of all of the trustees present at any meeting of the board to pass any motion or resolution on which the yeas and nays are called, be and the same is hereby repealed, except so far as relates to any motion or resolution for the sale of real estate belonging to the corporation, or for the purchase of real estate by the corporation, or for creating any lien on said real estate by payment or mortgage, or for the expenditure of moneys appropriated by the state where such expenditure is not specifically designated by law, or for the surrender of the franchises of the corporation: Provided, That at any such meeting a majority of the whole board of trustees be present.⁵⁸

Distribution of state appropriation.

877. All state appropriations made directly to normal schools shall be distributed through a commission, consisting of the governor, the superintendent of public instruction and the attorney general, on such conditions as shall protect the interests of the state, and to do exact and equal justice to the several schools; and the conditions of all such

54. *Supra*, 85.

55. Act April 12, 1875, Sec. 5, P. L. 43.

* *Note*—See *Infra*, 876.

56. Act April 12, 1875, Sec. 6, P. L. 43.

57. *Supra*, 875.

58. Act March 24, 1877, Sec. 1, P. L. 37.

appropriations, when made to aid students in becoming teachers, shall be fixed by the law making them.⁵⁹

Limitation of indebtedness.

878. No institution shall hereafter be recognized as a state normal school with an indebtedness exceeding one-third of the value of the property belonging thereto, nor without being fully provided with buildings, furniture and apparatus as the law requires.⁶⁰

**Bonded indebtedness may be refunded. Increase of mortgage.
Statement to auditor general.**

879. The several normal schools of the state of Pennsylvania, by their trustees, be and they are hereby authorized and empowered to replace, upon the buildings and grounds of any of said schools or any part of the same, any mortgage that is or shall become due on or after the passage of this act, at a lower rate of interest, not to exceed five per centum per annum ; and to increase said mortgage to a sum not, in any event, to exceed fifty thousand dollars, for the payment of debts contracted by the trustees of such normal school prior to the time of the passage of this act : Provided, Said increase is for the purpose of paying loans and indebtedness heretofore contracted by said trustees for the erection of buildings and making of improvements to buildings and grounds : And provided, also, That an itemized and certified statement of the expenditures of said buildings and improvements be first submitted to the auditor general, and be approved by him.⁶¹

Execution of bonds and mortgages.

880. The bonds and mortgages of such school, hereby authorized, shall be signed by the president and attested by the secretary of the board of trustees, under the seal of the school, by the direction of the board of trustees, and shall be payable at such time as they may fix.⁶²

59. Act April 12, 1875, Sec. 7, P. L. 43.

60. Act April 12, 1875, Sec. 8, P. L. 43.

61. Act May 22, 1901, Sec. 1, P. L. 290.

62. Act May 22, 1901, Sec. 2, P. L. 290.

Priority of lien. Exemption from tax.

881. The said bonds and mortgages, to be so placed, shall be prior liens to all mortgages and liens of the Commonwealth of Pennsylvania for money heretofore appropriated to the said schools by the state of Pennsylvania ; and that said bonds and mortgages shall be and hereby are exempt from all taxes.⁶³

No power to mortgage without special statutory authority.

882. The trustees of a state normal school have no power to mortgage the school property in the absence of authority by special statute. The act of the 22d of May, 1901, confers such power only for the purpose of refunding existing bonded indebtedness at a lower rate of interest.⁶⁴

Normal schools subject to mechanics' liens.

883. A normal school incorporated for the purpose of training teachers for the public schools, and receiving recognition and aid from the state under the act of May 20, 1857, P. L. 581, is not a quasi public corporation, and its property is subject to mechanics' liens.⁶⁵

Condemnation of real estate. Enlargement of school grounds. Bond.

884. Whenever the board of trustees of any state normal school of this Commonwealth deem it necessary to enlarge the area of the real estate upon which the buildings of said normal school are erected, to meet the growing demands of said institution, including a campus, and cannot agree with the owner or owners of the land they wish to acquire, as to its purchase or occupancy, it shall be lawful for said board of trustees, on behalf of said normal school district, to enter upon and occupy sufficient ground for the purposes aforesaid, which they shall mark off, not exceeding two acres, and to use and occupy the same, for the purposes for which they desire to use and occupy the same in connection with the said school ; and for all damages done for the taking of the same, for the purposes as aforesaid, the

63. Act May 22, 1901, Sec. 2, P. L. 290.

64. School Boards, 11 D. R. 134, 1902.

65. McLeod vs. Normal School, 152 Pa. 575, 1893.

trustees of such normal school district shall give bond, with security approved by the court of common pleas of the county in which such lands are situated, conditioned for the payment of such damages when the same shall be agreed upon by the parties or assessed according to law, which bond shall be filed in said court, for the use of the person interested.⁶⁶

Petition. Appointment of viewers.

885. The court of common pleas of the county in which said normal school is located, on application thereto by petition, either by said normal school district by its president or secretary, they being instructed by their board so to do, or by the owner or owners of said lands, in behalf of all to appoint a jury, consisting of three disinterested citizens of said county and appoint a time, not less than thirty days thereafter, for said viewers to meet upon said land, of which time and place at least ten days' notice shall be given by petitioner to the said viewers and the other party.⁶⁷

Viewers to be sworn.

886. The said viewers or any two of them having first been duly sworn or affirmed faithfully, justly and impartially to decide and a true report to make concerning all matters to be submitted to them in the premises.⁶⁸

The view. Estimate of damages. Report.

887. Having viewed the ground, they shall estimate and determine the quantity and value of said land so taken, to be used for the purposes aforesaid ; and after having made a just and fair comparison of the advantages and disadvantages, they shall estimate and determine whether any, and, if any, what amount of damages has been or may be sustained, and to whom payable, and make report thereof to said court ; and if damages be awarded, and the report be confirmed by the said court, judgment shall be entered therefor ; and if the amount thereof be not paid within thirty days after the entry of said judgment, execution to

66. Act July 10, 1901, Sec. 1, P. L. 632.

67. Act July 10, 1901, Sec. 2, P. L. 632.

68. Act July 10, 1901, Sec. 2, P. L. 632.

enforce payment shall be had as in other similar cases : Provided, That either party shall have the right to have reviewers appointed by said court.⁶⁹

Compensation of viewers.

888. Each viewer shall receive three dollars per day for each day necessarily employed in said view or review.⁷⁰

Appeal from report of viewers.

889. Each party shall have the right to appeal from the report of said viewers or reviewers to the court of common pleas, within thirty days after the filing of such report, and the same shall be tried by a jury as in similar cases.⁷¹

Costs. By whom paid.

890. The cost of the first view shall be paid by the party condemning the property ; the cost of the review or appeal shall be paid by the party losing the controversy.⁷²

Eminent domain. Extension of corporate privileges.

891. This is a proceeding under the act of July 10, 1901, P. L. 632, authorizing the condemnation of real estate needed for the use of state normal schools. The prayer of the petition is that the title to the real estate within the boundaries set forth be declared to be in the petitioner freed from any easement or right of way over the premises on account of the location of streets and alleys thereon.

In 1873 L. W. Morgan laid out an addition to the town of California outside of the borough limits. The land included in the plan was divided into thirty-six lots with streets and alleys connected therewith. A copy of the plan of lots was recorded in the office of the recorder of deeds of the county. The petitioner purchased a block of twelve of these lots prior to July, 1901. The other lots were sold to different persons. The plan of lots attached to the petition shows that a street fifty feet wide extends from the Monongahela River through the middle of the whole block of lots and connects with a public road. The Monongahela River

69. Act July 10, 1901, Sec. 2, P. L. 632.

70. Act July 10, 1901, Sec. 2, P. L. 632.

71. Act July 10, 1901, Sec. 2, P. L. 632.

72. Act July 10, 1901, Sec. 3, P. L. 632.

Consolidated Coal and Coke Company owns the six lots nearest to the Monongahela River and C. W. Yarnell owns three lots near the middle of the block, all of which lots front on the street referred to. The coal and coke company has a coal tipple, a coal siding, several houses and other improvements on its lots adjoining the river and the only outlet it has to any public road is over this street. Access is also had to the Yarnell lots by the same means. The township authorities never formally accepted the street, but it was used by the owners of the lots abutting thereon and by the public as a highway for more than twenty-one years prior to the passage of the act of 1901. The petitioner is the owner by purchase of lots Nos. 10 to 15 fronting on one side and Nos. 28 to 33 fronting on the other side of this street. The object of the present proceeding is to close that part of the street and the alleys connected therewith on which these lots front in order that the petitioner may have exclusive possession of the street to be used in connection with the grounds occupied as a campus.

It is not claimed that prior to the act of 1901 a normal school had the right of condemnation now set up. That act provides that when the board of trustees of any state normal school deems it necessary "to enlarge the area of the real estate upon which the buildings of such normal school are erected" and cannot agree with "the owner or owners of land they wish to acquire as to its purchase or occupancy," they may enter upon and occupy sufficient ground for the purpose "which they shall mark off not exceeding two acres." The second section of the act provides for the appointment of viewers who, after having viewed the ground "shall estimate and determine the quantity and value of the said land so taken to be used for the purposes aforesaid."

If we concede that the act is a valid investiture of state normal schools with power to condemn real estate, without an express limitation of the land so condemned to public use, such legislation being in derogation of private rights should be strictly construed. "No lax construction of the grants to corporations is required against public in-

terest and individual rights:" *Cake vs. Philadelphia and Erie Railroad Co.*, 87 Pa. 307. Acts extending corporate privileges are to be construed most strongly against the company setting them up and whatever is not unequivocally granted must be taken to be withheld: *Pennsylvania Railroad Company's Appeal*, 93 Pa. 150; *Groff's Appeal*, 128 Pa. 621. The power must be given in plain words or by necessary implication. All powers not given in this direct and unmistakable manner are withheld: *Com. vs. E. & N. E. R. R. Co.*, 27 Pa. 351.

Does then the act of 1901 authorize the proceeding now sought to be enforced? An inspection of the statute makes it very clear that in legislative contemplation the "ground" or "land" to be taken was other than the land of the petitioner, and that the subject of condemnation was "ground" or "land." A method was thereby established for securing a limited enlargement of the "area of the real estate upon which the buildings of the said normal school are erected." A bond is required to be approved by the court of common pleas of the county "in which such lands are situated;" and the viewers are to determine "the quantity and value of the said land so taken."

In the case under consideration the petitioner is already the owner of the land upon which the highway is located and seeks by this proceeding not to condemn the land of another owner but a public right of way over its own land. That a right of way may be appropriated is undoubtedly true, but our attention has not been called to any case in which a right of way has been taken except in connection with the land over which the right of way exists.

We agree, therefore, with the conclusion of the learned judge of the court below that the act of 1901 does not authorize the act sought to be accomplished in this case.

There is another objection to the proceeding, however, which we regard as insuperable. The attempt is to appropriate a public street without any apparent necessity so to do. It was held in *Heckerman vs. Hummel*, 19 Pa. 64, that the dedication of streets and alleys in laying out a plan for a town is a contract with the public, and in *Quicksall*

vs. Philadelphia, 177 Pa. 301, that the sale of lots according to a plan which shows them to be on a street implies a grant or conveyance to the purchaser that the street shall be forever open to the public, and operates as a dedication of it to public use. The right to the purchaser is not the mere right that he may use the street, but that all persons may use it. Where one conveys lots according to a plan which shows them to be on streets, he must be held to have stamped on them the character of public streets: In *re Opening of Pearl Street*, 111 Pa. 565. The same doctrine was reasserted in *Woodward vs. Pittsburg*, 194 Pa. 193.

The "easement" which the petitioner seeks to condemn is a public street, made so not only by the dedication of the owner of the land who established the plot and sold lots in accordance therewith, but also by continuous use by the public for more than twenty-one years. That franchises are subject to eminent domain has been determined in numerous cases, but it is as certainly declared that they cannot be taken without authority clearly expressed or by necessary implication. It was held in *Pittsburg Junction R. R. Co.'s Appeal*, 122 Pa. 511, that while a franchise is property, and as such may be taken by a corporation having the right of eminent domain, yet in favor of such right there can be no implication unless it arises from a necessity so absolute that without it the grant itself would be terminated. It must also be a necessity that arises from the very nature of things over which the corporation has no control. It must not be a necessity created by the company itself for its own needs or for the sake of economy. To the same effect is *Groff's Appeal*, *supra*; *Cake vs. P. & E. R. R. Co.*, *supra*; *Stormfeltz vs. Manor Turnpike Co.*, 13 Pa. 555.

In the case of a street or highway, however, something more than necessity is required to authorize an appropriation. A public street is a public franchise, and is not such property as a corporation may take for its own use under the general power of eminent domain. It is a franchise which cannot be violated except by express legislative authority: *Pa. R. R. Co.'s Appeal*, *supra*. No direct legislative grant authorizes the appellant to appropriate the

street, nor, if the subject were a private franchise, has any absolute necessity for its condemnation been disclosed. We are therefore of the opinion that the authority asserted does not exist, and that the conclusion of the learned judge of the court was correct.⁷³

Officers of institutions receiving state aid shall not sell or furnish supplies. Misdemeanor. Fine and penalty.

892. No officer or member of the board of managers of an institution, at a time when said institution is receiving state moneys from legislative appropriations, to furnish supplies to such institution, either by direct sale or sale through an agent or firm, or to act as an agent for another in so furnishing supplies. Any person who may violate any of the provisions of this act shall be guilty of a misdemeanor, and upon conviction therefor shall be punished by a fine not exceeding five hundred dollars, or by imprisonment not exceeding one year, or both fine and imprisonment at the discretion of the court.⁷⁴

Manager or trustee of an institution receiving state aid forbidden to sell or furnish supplies to students.

893. Attorney General Carson said :—

“ I have considered your request for an opinion upon the following facts :

“ You state that there is connected with the state normal school at Millersville a store, for which a license is paid to the county. In this store, in addition to books, a number of articles are kept to sell to students and others. Among the miscellaneous articles are school pins, alumni badges, and literary society pins. These pins and badges are sold to students and others at a small profit, they having been purchased from a jeweler who is one of your trustees.

“ You ask whether the Act of April 23, 1903, P. L. 285, prohibits him from selling these articles to the stores in the future ; and you state that it occurs to you that gold and silver pins cannot properly be classed as school supplies, and you are anxious to make no mistake in the matter.

73. South Western State Normal School, 26 Pa. Superior Ct. 99, 1904.

74. Act April 23, 1903, P. L. 285.

"I appreciate the candor and spirit of your inquiry, and also the desire of the manager or trustee to do nothing which the law forbids.

"The relation of the institution to the store is not stated with precision, but I take it that the institution maintains and conducts the store, purchasing the articles dealt in and selling them to the students. I do not perceive any authority for this; but as long as the institution conducts the store, I am satisfied that it belongs to the institution, and therefore constitutes a part of it. It cannot be run as an individual enterprise. As long as it exists, it must be regarded substantially as the institution itself. Hence, the sale to the store of articles dealt in must be viewed as a sale to the institution itself.

"The first section of the Act of April 23, 1903, declares that 'It shall not be lawful for any officer or member of the board of managers of an institution, at a time when said institution is receiving state moneys from legislative appropriations, to furnish supplies to such institution, either by direct sale or sale through an agent or firm, or to act as an agent for another in so furnishing supplies.'

"The violation of the provisions of the act constitutes a misdemeanor, punishable by a fine or imprisonment, or both, at the discretion of the court.

"This is a penal statute and must be construed strictly. In the case of *Trainer vs. Wolfe*, 140 Pa. 279, a question arose under the 66th section of the Act of March 31, 1860, P. L., 382, by which members, officers and agents of any corporation or public institution were forbidden to be interested 'in any contract for the sale or furnishing of any supplies or materials' to be furnished to or for the use of such corporation or institution. It was held that as the act made no mention of the purchase of real estate and was a highly penal statute, it could not be extended by implication beyond its precise meaning, so as to apply to the purchase by a school board of real estate in which one of the directors was interested.

"Giving the act under consideration the strictest construction, I am of the opinion that it is unlawful for the

manager or trustee to sell anything—whether in the nature of badges, pins, class devices or otherwise—to the store. The sale is to the institution. The resale to the students does not change the character of the original act. The purpose of the law was to forbid a manager from maintaining a pecuniary or business or creditor relation to the institution of which he is an officer. Whether he makes a profit or not is not the question, or whether the institution makes a profit or not is not the question, or whether the convenience of students is promoted or not is not the question, nor is it even a question whether the state, directly or indirectly, gains or loses or is unaffected by the transaction. The act is aimed at the suppression and extinction of the business relation of the manager to the institution.

“The word ‘supplies,’ while generally supposed to mean sustenance, which is food, fuel, bedding or articles of daily necessity, has a broader meaning. It may mean the act of supplying what is wanted or that which is supplied ; means of bringing relief ; sufficient for use or need ; a quantity of something supplied or on hand ; a stock ; a store : Century Dictionary.

“If it be convenient to furnish class pins to students, it would be equally so to furnish bats, balls, tennis rackets, golf clubs, hats, caps, trousers, knee caps, shoes, sneakers, sweaters, boxing gloves, foils, etc., until the list of articles dealt in comprised almost everything sought or likely to be sought by students of varied tastes and demands. The only safe course is to buy nothing from a manager, or to close the store and thus compel the students to do their own purchasing direct.”⁷⁵

State may purchase real estate of normal school in certain cases.

894. In case the real estate of any state normal school, upon which the state has a lien or liens by mortgage, shall be exposed to sale by judicial process, it shall be lawful for the governor, superintendent of public instruction and attorney general, or a majority of them, if in their opinion the interests of the state will thereby be promoted, to cause a bid or bids to be made on behalf of the state at any such

75. Public Institutions, 13 D. R. 341, 1903.

sale for such sum or sums of money as may in their judgment be necessary to secure and protect the interests of the Commonwealth, the title, in case the property shall be struck down at their bid, to be taken in the name of the Commonwealth : Provided, That in no case shall such bid or bids exceed the amount of said lien or liens, together with prior liens, if any such exist.⁷⁶

Return of sale made to auditor general.

895. In case any real estate shall at any such sale be struck down on the bid of the officers aforesaid, they shall make return of their action in the premises to the auditor general, who, upon passing the account, shall give a certificate of the fact and amount payable out of any appropriation made or to be made for that purpose.⁷⁷

Appropriation to pay purchase money.

896. There shall be and hereby is appropriated, to be paid out of any moneys in the treasury not otherwise appropriated, such sum or sums as may be required to meet the bids of said officers, upon the amount being returned to and passed by the auditor general as aforesaid.⁷⁸

Insurance money to be held in trust.

897. All moneys received or that may hereafter be received by the Commonwealth from any insurance policy or policies upon buildings belonging to any of the state normal schools, shall be held by the state treasurer in trust for the repairing and rebuilding of the part covered by such insurance policy or policies, under direction of the trustees of such normal school.⁷⁹

Insurance money to be used for repairing and rebuilding.

898. When the trustees of any normal school, whose buildings, insured for the use of the state, have been injured or destroyed by fire, shall have repaired or rebuilt the part

76. Act June 4, 1879, Sec. 1, P. L. 89.

77. Act June 4, 1879, Sec. 2, P. L. 89.

78. Act June 4, 1879, Sec. 3, P. L. 89.

79. Act June 3, 1885, Sec. 1, P. L. 71.

covered by such insurance policy or policies, and shall satisfy the board of public instruction consisting of the governor, attorney general and superintendent of public instruction, that the amount of insurance money received by the state has been expended on such repair or rebuilding, the superintendent of public instruction shall draw his warrant in favor of said normal school for the amount of such insurance money or for such part thereof as the said board of public instruction shall be satisfied has been expended on such repair or rebuilding, and the state treasurer is authorized and required to pay said warrant out of the insurance money thus received.⁸⁰

80. Act June 3, 1885, Sec. 2, P. L. 71.

CHAPTER XXXVI.

SCHOOL FOR CORNPLANTER INDIANS.

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Preambles.

899. Whereas, The general assembly by enactments of eighteenth of April, one thousand eight hundred and fifty-six,¹ and its supplements of tenth of February, one thousand eight hundred and seventy-two,² and twelfth of April, one thousand eight hundred and seventy-eight,³ and the seventh day of July, one thousand eight hundred and eighty-five,⁴ and the third day of July, one thousand eight hundred and ninety-five,⁵ and supplement thereto on the twenty-second day of July, one thousand eight hundred and ninety-seven,⁶ has established schools and made appropriation for the encouragement of education among the Cornplanter Indians, of Warren county ;

And whereas, The appropriation provided for expires on the first Monday of June, one thousand nine hundred and five, and it is deemed wise to extend further aid on the part of this Commonwealth for the maintenance of said schools and the encouragement of education among said Cornplanter Indians ; therefore,

Appropriation for schools among Cornplanter Indians.

900. That the annual sum of five hundred dollars be and the same is hereby appropriated, out of any money in the treasury not otherwise appropriated, to be paid to the county superintendent of schools of Warren county, on war-

Note—1. P. L. 410.

2. P. L. 100.

3. P. L. 17.

4. P. L. 263.

5. P. L. 544.

6. P. L. 402.

rant drawn on the state treasurer by the state superintendent of public instruction; which money shall be disbursed by the said superintendent of Warren county, in such manner as shall best promote the cause of education among the Cornplanter Indians: Provided, That this act shall only continue in force for the period of ten years, and shall terminate on the first Monday of June, one thousand nine hundred and fifteen.⁷

Provision for the erection, furnishing and equipment of school house on Cornplanter Indian lands. Preambles.

901. Whereas, In the year one thousand seven hundred and ninety-six the Commonwealth of Pennsylvania made a grant of land, located on the west side of the Allegheny river, in what is now Warren county, to the Indian Chief Cornplanter, of the Seneca tribe, this grant being made to said Cornplanter and his descendants to provide them with a home, and in consideration of the friendship to and great services of the said Cornplanter to the white settlers of Western Pennsylvania;

And whereas, Since the year one thousand eight hundred and fifty-six, the Commonwealth of Pennsylvania has maintained a school upon said land for the children of the descendants of said Cornplanter, this school now containing about thirty children of these descendants;

And whereas, The school house, built many years ago, has become dilapidated and unfit for use;

And whereas, There is no suitable place within a distance of three or four miles for a teacher to board, making it desirable if a new school building is erected that it contain living apartments for the teacher:—

Commission to be appointed by governor.

902. That a commission shall be appointed, consisting of three persons, residents of Warren county, Pennsylvania, who shall serve without compensation, but shall be allowed necessary expenses, and who shall be appointed by the governor.⁸

7. Act April 10, 1905, P. L. 124.

8. Act April 13, 1903, Sec. 1, P. L. 169.

Plans.

903. Said commissioners shall prepare plans for the erection of a suitable school building, of either wood or brick as they shall decide, containing at least one suitable school room, and at least three apartment rooms for the use of a teacher, on the school house lot of the Cornplanter Indian lands, and such articles of furniture and equipment as they deem necessary ; and after said plans have been approved by the superintendent of public instruction, said commissioners shall advertise for two weeks in two newspapers in the county of Warren, for proposals for the erection, furniture and equipment of said school house, and shall let the erection and the furnishing and equipment to the lowest responsible bidder or bidders.⁹

Contract.

904. For the erection, furnishing and equipment of this building, the cost shall not exceed three thousand dollars; and the sum of three thousand dollars, or so much thereof as is necessary, is hereby specifically appropriated therefor ; one-half of said appropriation to become available when the said commissioners shall file with the auditor general a copy of the plans for the building, furniture and equipment, approved by the superintendent of public instruction, together with contracts, in writing, in satisfactory form, executed by responsible contractors, with good and sufficient sureties for the entire erection, furnishing and equipment of said building ; and the final payment of this appropriation shall be made upon the affidavits of at least two of said commissioners that the work has been completed, and the furniture and equipment installed, in full compliance with the plans on file with the auditor general.¹⁰

9. Act April 13, 1903, Sec. 2, P. L. 169.

10. Act April 13, 1903, Sec. 3, P. L. 169.

CHAPTER XXXVII.

MISCELLANEOUS.

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Appointment of trustee of property conveyed by academy to com- mon school district.

905. In all cases where the trustees of any academy or seminary in this Commonwealth, which received money or land therefrom for educational purposes, have conveyed the real estate, buildings and property, and funds of, or belong-

ing thereto, to the board of directors, and their successors in office, of the common schools of the district in which the main building thereof was situated, in pursuance of the authority contained in section sixteen of the act of April eleven, one thousand eight hundred and sixty-two, and when the amount or value of such estate, real or personal, still remaining unused and unexpended by the said school district, exceeds ten thousand dollars (\$10,000), it shall be the duty of the court of common pleas of the proper county, upon the petition of the majority of the board of school directors of said school district, presented for that purpose, to appoint a suitable person as trustee of said estate thus transferred and still remaining unexpended, who shall receive the same.¹

Duties of trustee.

906. It shall be the duty of said trustee so appointed to collect the money due upon the securities and convert the stock into money, if deemed for the best interest of the district, and invest and keep invested, from time to time, all moneys received or collected at interest in bonds or mortgages upon real estate, or in the interest-bearing debt of the state or of the United States, as may be approved by said court, and pay over the interest or income thereof regularly to the treasurer of said school district for the purposes aforesaid, first deducting therefrom all reasonable expenses attending the execution of the trust, including a compensation to said trustee not exceeding four per cent. upon the income received.²

Bond of trustee.

907. Before the said trustee or his successors in the trust shall receive any part of said money, securities or stocks, he shall give bond to said district in such sums and with such sureties as shall be approved by said court, conditioned for the faithful performance of all duties pertaining to said trust and paying and delivering over to his successor

1. Act June 10, 1881, Sec. 1, P. L. 119.

2. Act June 10, 1881, Sec. 1, P. L. 119.

therein or other party legally entitled to receive the same all moneys and securities received and held by him as trustee.³

Account.

908. The trustee shall, on the first day of the first term of each year, exhibit to said court a full, true and correct account in writing, under oath, of his management of said trust fund, how and in what securities the same is invested, and the rates of interest received thereon, which account, when examined and approved by the said court, shall be filed with the records thereof.⁴

Removal of trustee.

909. The court shall also have the power, at any time upon sufficient cause shown, to remove said trustee or require of him additional sureties for the performance of his trust, and shall, whenever and as often as a vacancy occurs by reason of such removal, or the death or resignation of said trustee, appoint a suitable person as his successor; and said trustee shall in all respects be subject to the control and jurisdiction of said court, in like manner as other trustees under existing laws.⁵

Independent school districts.

910. That all former acts, and parts of acts, relative to the common school system which are supplied by or are inconsistent with the provisions of this act, and all laws relating to or creating independent districts, or authorizing the establishment of sub-districts, and the appointment of committees, are hereby repealed.⁶

Independent school districts abolished.

911. Be it enacted by the senate and house of representatives of the Commonwealth of Pennsylvania in general assembly met, and it is hereby enacted by the authority

3. Act June 10, 1881, Sec. 2, P. L. 119.

4. Act June 10, 1881, Sec. 2, P. L. 119.

5. Act June 10, 1881, Sec. 2, P. L. 119.

6. Act May 8, 1854, Sec. 52, P. L. 617. This section extinguished all sub-districts that had been formed before its passage. *Conley vs. Directors West Deer Twp.*, 32 Pa. 194, 1858.

of the same, That so much of the act ^{6½} to which this is a supplement, as abolishes independent districts at present established under special acts of assembly, shall not take effect until the first day of June, one thousand eight hundred and fifty-six.⁷

When act to take effect. Proceedings to continue independent school districts.

912. That the continuance of independent districts beyond the period named in the foregoing section, may be allowed, when on the application of the directors of any such district to the judges of the court of common pleas of the county in which any portion of said district may be located, setting forth the necessity for its continuance, the said judges may, after careful consideration, decree the same.⁸

How rights of property are to be determined. Notice.

913. In all cases where the said court shall refuse to allow a further continuance of any such district, they shall be authorized and required, also, to determine the rights or property vested in the several school boards in any such district, and make proper disposition of the same: Provided, That the board of school directors of the townships out of which any such applying independent school district may be formed, shall have received ten days' notice of the proposed application, and of the time and place of hearing.⁹

Notice.

914. That act does not indeed require, in express terms, that the commissioners shall give notice of the time and place, when and where they will proceed to inquire into the expediency of establishing the new municipal division. But the public interests, as well as justice to individuals, so obviously require that such notice should be given, that it has always been held that the want of it is fatal to the proceedings: Bethel Township, 1 Pa. 97; Norwegian Township, 20 Pa. 324. It is quite as necessary that this should appear

6½. Act May 8, 1854, Sec. 52, P. L. 617.

7. Act May 8, 1855, Sec. 1, P. L. 509.

8. Act May 8, 1855, Sec. 2, P. L. 509.

9. Act May 8, 1855, Sec. 2, P. L. 509.

affirmatively, as that it should appear that a party has had his day in court. Every division of a township or school district may affect seriously the interests of the inhabitants, and they have, therefore, a natural right to be heard in the matter.¹⁰

Report of commissioners.

915. The requisites of a proceeding to form an independent school district are, in most respects, the same with those necessary to erect a new township. The commissioners are not indeed confined to the consideration of the precise geographical division for which the petitioners ask, and perhaps it is not indispensable, as it is in a proceeding to erect a new township, that the order should contain an express and explicit direction to inquire into the propriety of granting the prayer of the petition, for it is not distinctly required by the act of assembly. And besides, such an inquiry is of no consequence ; for, as has been said, they may set off a new district, according to different bounds from those proposed in the petition, and they are to report their opinion on the expediency of a district with the limits which they select. But in all other respects the law requires that the proceedings upon the petition, commission and report, and the final disposition thereof, shall be according to the act of assembly relative to the erection of new townships.¹¹

In reporting a new district, the commissioners should annex a draft.

916. It is incumbent upon the commissioners to annex a draft to their report, exhibiting both the lines of the independent districts from which it is taken, in order to display the relation which the new district sustains to the old. The 5th section of the act of 8th of May, 1855, does not stop with the provision that the commissioners shall report the lines adopted for the new district, but adds that "the proceedings upon which petition, *commission and report*, and the final disposition thereof, shall, in all other respects, be

10. Independent School Dist. in Sewickley Township, 33 Pa. 297, 1858.
Clearfield Independent School District, 79 Pa. 419, 1875.

11. Independent School Dist. in Sewickley Township, 33 Pa. 297, 1858.

according to the act of assembly, now in force, relative to the erection of new townships." That act, to wit, of 15th April, 1834, Sec. 14, requires the commissioners "to make a plot or drafts of the townships proposed to be divided, and the division line proposed to be made therein, or of the township proposed to be laid off." The same duty lies, therefore, upon the commissioners to lay off an independent school district.

In the case of Independent District in Sewickley Township, 33 Pa. 297, the fourth exception was in these words: "There was no draft returned by the commissioners of the lines of the new district, nor of the lines of the township from which it was created." Justice Strong quotes the language of this exception, and says, "This is a fatal defect." That these views are justified by the legislative intent we are authorized to believe, by the interpretation of the Act of 1855, summed up in the 1st section of the Act of 20th of May, 1857.*¹²

Duties of assessors.

917. That the assessors in each and every township, where any portion of said township may be included within the limits of an independent school district, shall write on their duplicates, opposite to the names of the persons residing within said independent district, the letters I. D., for the information of the collector of said tax and the county commissioners.¹³

Election of school directors in independent districts.

918. That in all cases in which school directors of independent districts have not been chosen at the recent spring elections, or on the day specially fixed by law, it shall be lawful for the qualified voters of any such district, to meet at their usual place of holding similar elections, ten days' notice thereof having been given by the late president of the proper board, and shall elect two persons to serve as school directors for the ensuing year; and the remaining

*. P. L. 587, *Infra* 922.

12. Wilkins Township School District, 70 Pa. 108, 1871.

13. Act May 8, 1855, Sec. 3, P. L. 509.

members and officers of the board who would have continued in office under the provisions of the supplement to the school law of May eighth, one thousand eight hundred and fifty-four, be and they are hereby continued in office until the expiration of the terms for which they were originally elected ; the said elections shall be held and conducted in the same manner and by the same persons heretofore authorized by law.¹⁴

How independent school districts may be formed.

919. That upon petition of not less than twenty taxable inhabitants of any township or townships, desiring the formation of the territory upon which they reside, into a separate and independent common school district, and setting forth the bounds of such proposed district,^{14½} the court of quarter sessions of the proper county shall appoint commissioners to view the premises and report to the court at its next term, the lines of the proposed new district, either according to the bounds set forth in the petition, or to such other bounds as they shall think more advisable, together with their opinion on the expediency of establishing or not establishing the same, the proceedings upon which petition, commission and report, and the final disposition thereof shall, in all other respects, be according to the act of assembly now in force, relative to the erection of new townships: Provided, That if said proceedings result in the establishment of a new common school district, the cost of the commission and the office fees shall be paid by the said new district, but if otherwise, said costs and fees shall be paid by the petitioners themselves.¹⁵

Proceedings upon erection of new independent school districts.

920. That whenever a new district shall be erected according to the provisions of this act, it shall become, to all intents and purposes of the common school system of the state, a separate and independent district, subject, however, to the provisions of the third and fourth sec-

14. Act May 8, 1855, Sec. 4; P. L. 509.

14½. Notice must be given as in section two, *supra* 913, 914.

15. Act May 8, 1855, Sec. 5, P. L. 509.

tions of the act to which this is a supplement ; and the proper court of quarter sessions shall moreover determine, on hearing, whether an undue proportion of the real estate and school houses belonging to the old district or districts are within the bounds of the new district, and if so, how much money shall be paid therefor by the new to the old district or districts, and in what proportions and at what time ; and *vice versa*, if less than its due share of real estate or school houses is within said new district, how much shall be paid to it by the old district or districts, and in what proportions and at what times ; the order for the payment of which several sums shall, from the date thereof, be in the nature of a judgment, and the amount recoverable according to the provisions of the twenty-first section of the act ¹⁶ to which this is a supplement.¹⁷

Duties of county commissioners.

921. That at the next annual assessment after the erection of any such new common school district, it shall be the duty of the county commissioners of the proper county to cause a separate assessment of the subjects and things liable to school tax in each portion of the new district lying within his proper township to be made out by the proper assessor thereof, and to be returned to them, wherefrom, after adjustment, they shall cause to be made a correct copy of the assessment thus obtained, in every portion of the new district, and shall furnish the same to the secretary thereof, in accordance with the 29th section of the act to which this is a supplement ; ¹⁸ and they shall, in like manner and at the same time, cause to be made out and furnished to the state superintendent of common schools, a full list of all the taxable inhabitants of said new district, according to the provisions of the 49th section of the act to which this is a supplement ; ¹⁹ and they shall pay out of the county funds to

16. Act May 8, 1854, Sec. 21, P. L. 617, *supra* 65.

17. Act May 8, 1855, Sec. 6, P. L. 509.

18. Act May 8, 1854, Sec. 29, P. L. 617, *Supra* TAXATION 400, 401, 402.

19. Act May 8, 1854, Sec. 49, P. L. 617, *supra* CHANGES IN SCHOOL DISTRICTS 41, STATE APPROPRIATION 750.

said assessors, the usual compensation for the services enjoined by this section.²⁰

Construction of Act May 8, 1855, P. L. 509. Court may vacate decree erecting independent school district.

922. The true intent and meaning of the provisions of the supplement to the general school law, approved the eighth day of May, Anno Domini one thousand eight hundred and fifty-five [P. L. 509], for the creation of independent school districts, was and is to provide in a guarded manner for exceptions to the general rule, and to protect and promote the educational welfare of occasional localities that, from natural or other adequate obstacles, could not be properly provided for under the organization of township districts; and further, it was not the intention to cut up townships into single school districts, nor to carve out the wealthier from the poorer portions of a township or townships, to the prejudice of the rights and interests of the latter: And it is further enacted, That when an independent district has been created in violation of these principles, the court of quarter sessions of the proper county is hereby authorized and required, upon application of not less than twenty citizens of the township or borough affected thereby, to open the decree of the court by which it was created, and after re-examination upon the merits, confirm or annul such districts, as the evidence may require; and hereafter no independent district shall be created in any case without the unanimous concurrence of the court.²¹

When certain independent school districts created by courts of common pleas may be abolished.

923. That in all cases where an independent school district has been created or continued by any of the courts of common pleas of this Commonwealth, it shall be lawful for said courts, upon the application of one-third of the taxable citizens of any school district, out of which any independent district may be erected, by petition, setting forth that they desire the abolition of any district, to hear and determine the application upon its merits, and if deemed ex-

20. Act May 8, 1855, Sec. 7, P. L. 509.

21. Act May 20, 1857, Sec. 1, P. L. 587.

pedient, the said court shall discontinue the said district or continue the same for any period not exceeding five years at any one time: Provided, If any district shall be discontinued, the school property of said district shall be disposed of as is required by the existing laws.²²

When other independent school districts may be abolished. Disposition of property.

924. That in all cases where an independent school district has been created by any of the courts of quarter sessions of the peace of this Commonwealth, or by act of assembly, it shall be lawful for said courts, upon the application of the majority of the taxable citizens of any school district, out of which any independent district may be created, by petition setting forth that they desire the abolition of any district, to hear and determine the application upon its merits, and if deemed expedient the said court shall discontinue the said district: Provided, If any district shall be discontinued the school property of said district shall be disposed of as is required by the the existing laws.²³

Elections in independent school districts regulated.

925. That when an independent school district shall be established the proper court shall, in the decree therefor, designate the time and place for holding the annual elections of directors therein, and appoint two persons to hold the first election, at a time appointed, therefor, who shall give ten days' notice thereof, by printed or written handbills, put up at not less than six public places within said district, at which first election six directors shall be chosen, two for three years, two for two years, and two for one year then next ensuing, and thereafter two directors shall be chosen for three years, at the annual election to be called and held by the president and secretary of the board, at the time or place, and in the manner, in said decree therefor appointed, said election, in all other respects, to be conducted in conformity with the existing school law; and that, in independent districts, established, or hereafter to be es-

22. Act May 20, 1857, Sec. 1, P. L. 588.

23. Act May 12, 1897, Sec. 1, P. L. 55.

tablished, by the legislature, without specifying the mode, time or place of electing directors, the first election shall be held at such time and place, within the proper district, as shall be specified by written or printed notices thereof, put up at not less than ten public places therein, signed by not less than five taxable citizens thereof, and giving ten full days' notice of such election, and subsequent elections shall be held at such time and place, annually, as shall be designated by similar notices, signed by the president and secretary of the proper board ; said elections, in all other respects, to be held and conducted in the manner in this section before provided.²⁴

Abolition of independent school districts created by the courts of quarter sessions.

926. In all cases where an independent school district has been created by any of the courts of quarter sessions of the peace of this Commonwealth, or by act of assembly, it shall be lawful for the court of quarter sessions of the county in which such independent district is located, upon application to said court of a majority of the taxable citizens resident within the limits of such independent school district, by petition, setting forth that they desire the abolition of said district, to hear and determine the application upon its merits ; and if deemed expedient, the said court shall discontinue the said independent district.²⁵

Reversion of Property.

927. If any such independent district be discontinued, as provided in section 1 of this act, the school property of such independent district shall revert to the districts out of which such independent district was originally created, and shall be apportioned among said districts in such manner as is required by existing laws.²⁶

24. Act April 11, 1862, Sec. 9, P. L. 471.

25. Act April 22, 1903, Sec. 1, P. L. 237.

26. Act April 22, 1903, Sec. 2, P. L. 237.

Application of Act April 22, 1903, P. L. 237.

928. That the provisions of this act shall not apply to independent school districts composed of parts of adjoining counties.²⁷

Repeal.

929. All acts or parts of acts inconsistent herewith be and the same are hereby repealed.²⁸

Against formation of independent school districts.

930. The law does not favor the erection of independent school districts : Independent School District in Franklin Township, 1 Susqh. Leg. Chron. 75. They are against the general policy of the law, and operate seriously to disarrange the general school organization : Independent School District in Sewickley Township, 33 Pa. 297 ; Mt. Pleasant Township Independent School District, 10 Pa. C. C. 588. They are not encouraged because exceptional : Hatfield Township School District, 2 Walker 169 ; Conley vs. School Directors, 32 Pa. 194. Hence it is held that, under the act of May 8, 1855, P. L. 509, as interpreted by the act of May 20, 1857, P. L. 587, "where no natural or other adequate obstacle prevents proper provision in the general common school organization of a township, no independent school district can be created. The existence of such an obstacle is an affirmative, substantive and essential fact in the proceedings ; a fact which must appear in order to obtain a decree. Every substantive, material and affirmative fact which, by the express language of the statute law, is made indispensable in the proof should be averred or should appear in the record : " Hatfield Township School District, 2 Walker 169 ; South Abington Township Independent School District, 11 Pa. C. C. 606 ; Independent School District in Greenwood Towhship, 19 Pa. C. C. 452.²⁹

Liquor license money payable to school districts.

931. In townships where the roads shall be made and repaired by tax payers, under contract with the township,

27. Act April 22, 1903, Sec. 3, P. L. 237.

28. Act April 22, 1903, Sec. 4, P. L. 237.

29. In re Independent School District in Franklin Township, 8 D. R. 370, 1898.

pursuant to the provisions of the act of 12th June, Anno Domini one thousand eight hundred and ninety-three, and its supplements, the proportion of liquor license money by existing laws made payable to such townships, and any and all money derived from same source, now in the hands of the township treasurer, or in the hands of any person or persons for the use of the township or townships, shall be paid, during the time the roads are thus or were made and repaired, to the treasurer of the school district of such township, for school purposes : Provided, That if any such township shall contain one, or more than one, independent school district, the license money due said township shall be divided among all the school districts thereof, every district receiving the proportion of license money that its assessed valuation of taxable property bears to the assessed valuation of such property in the entire township.³⁰

Penalties recovered for trespass upon private property to be paid to school fund.

932. It shall be unlawful for any person wilfully to enter upon any land, within the limits of this Commonwealth, where the owner or owners of said land has caused to be prominently posted upon said land printed notices that the said land is private property, and warning all persons from trespassing thereon, under the penalties provided in this act.³¹

Fine and penalty.

933. Every person violating the provisions of this act shall be liable to a penalty of not exceeding ten dollars, together with the costs of prosecution, to be recovered before any magistrate or justice of the peace, as fines and penalties are by law recoverable ; and in default of payment of said fine and costs, the party convicted shall be committed to the county jail of the proper county, for one day for each dollar of fine imposed.³²

Penalties payable to the school fund.

934. All penalties recovered under this act shall be paid to the school fund of the district in which the trespass was committed.³³

30. Act April 22, 1903, Sec. 1, P. L. 259.

31. Act April 14, 1905, Sec. 1, P. L. 169.

32. Act April 14, 1905, Sec. 2, P. L. 169.

33. Act April 14, 1905, Sec. 3, P. L. 169.

CHAPTER XXXVIII.

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Agreement between teacher and directors.

936.

Agreement made and concluded, this day
of, 19.., between, teacher of the
first part, and the board of school directors of.....
school district, in county, state of Pennsylvania,
of the second part, as follows, to wit :

The said hereby covenants and agrees with the board of school directors of school district, that (he or she) will faithfully and diligently, under the supervision and exclusive direction of the said board and their successors, but subject, nevertheless, to the visitation and lawful authority of the county superintendent, teach in school house for the term of months; reserving the right of the board of directors to dismiss the said teacher at any time whatever, for any of the causes specified in the twenty-third section of the act of May 8, 1854, entitled "An act for the regulation and continuance of a system of education by common schools."

In consideration whereof, the said board of school directors of school district agrees to pay the said , for (his or her) services as aforesaid, the sum of dollars per month, during the period above named, to be paid

In witness thereof the parties have hereunto set their hands and seals this day of , A. D. 19
 , (seal)
President Board of School Directors.
 , (seal)
Teacher.

Countersigned :

.
Secretary Board of School Directors.

Form of annual statement of district accounts.

937.

Common school district.

Receipts and expenditures for 19 . . .

Tax rate, mills on the dollar of valuation for school purposes, and mills for building purposes.

Receipts.¹

1. If there was a building tax and a house or houses erected during the year, the amount of the building tax, and the portion of it expended in the year for this purpose, is to be stated in the same way, with the balance on hand, or the debt for this purpose, if any, under the proper heads "Receipts," and "Expenditures for Building," as in the case of ordinary school tax and expenditure.

Balance on hand from last year (if any), as per last report	\$.....
From collector, including taxes of all kinds	
From loans, since last report	
From county treasurer, for unseated lands, since last report	
From state appropriation for year ending June, 19..	
From all other sources (as sales of houses or lands, liquor fines, etc.)	
Total receipts	\$.....

Expenditures.

For purchasing grounds	\$.....
For building and furnishing houses	
For renting and repairing, etc.	
For teachers' wages.	
For school books and supplies	
For fuel and contingencies	
For fees of collector, \$...., and treasurer, \$....,	
For salary of secretary or district superintendent.	
For debt and interest paid	
For other expenses	
Total expenditures	\$.....

Cash on hand	\$.....
Or, amount due treasurer	\$.....

Resources.

Cash on hand, if any	\$.....
Amount due district from all sources	
Total resources	\$.....

Liabilities.

Amount due treasurer, if any	\$.....
Amount due on unsettled bills, if any	

Amount borrowed and unpaid, or debt of district.....

Total liabilities.....\$.....

Order on district treasurer.

938.

\$

To the Treasurer of.....School District.....
....County :

Sir: Pay to.....or order,dollars andcents, being one month's salary due him as teacher up to.....(or on account of salary, or for fuel furnished to... ..school house, or for rent for school house, etc., as the case may be), for which this will be your sufficient voucher on settlement of your accounts.

By order of the board of directors :

.....

President.

Countersigned :

.....

Secretary.

Bond for treasurer of school district.

939.

Know all men by these presents, that we,.....
.....and.....of.....in.....
County, Pennsylvania, are held and firmly bound to
....., president of the board of school directors of.....
.....school district, in.....county, for the use
of said school district, in the sum of.....dollars
(here insert double the amount of the sum that will probably come into the hands of the treasurer for one year, for school purposes), lawful money, to be paid to the said
.....school district; to which payment well and
truly to be made and done, we bind ourselves, jointly and
severally, our heirs, executors and administrators, and
every of them, firmly by these presents. Sealed with our
seals; dated the day of, one
thousand nine hundred and

Whereas the said..... has been duly chosen treasurer of the said..... school district, for and during the term of one year from the date hereof: Now the condition of this obligation is such, that if the said..... shall and do well and faithfully perform all the acts and duties lawfully pertaining to his office as district treasurer aforesaid, according to the terms of the school law, approved the 8th day of May, 1854, and the supplements thereto, then this obligation to be void; else to be and remain in full force and virtue. And further, we do hereby empower any attorney of any of the courts of record of this state or elsewhere, to appear for us, and after one or more declarations filed for the above penalty, thereupon to confess judgment or judgments against us, as of the last, next, or any subsequent term, without stay of execution, and with release of errors, etc.

(Signed and sealed by obligors and witnessed.)

Bond of collector of school tax.

940.

Know all men by these presents that we,..... and....., of....., are held and firmly bound unto the Commonwealth of Pennsylvania in the sum ofdollars, lawful money of the United States of America, to be paid to its certain attorney or assigns, to which payment well and truly to be made we bind ourselves, our heirs, executors and administrators firmly, jointly and severally, by these presents. Sealed with our seals and dated the....day of....., 19...

Whereas the above bounden has been duly elected and returned to the court of quarter sessions of the peace of the county of..... as collector of taxes of the township of....., in the said county, for the ensuing year, and has been duly qualified according to law:

Now, the condition of this obligation is such, that if the said..... shall and do well and truly collect and pay over, or account for, according to law, the whole amount of taxes charged and assessed in the duplicates which shall be delivered to him, and faithfully discharge the duties appertaining to the office of collector of taxes, according to

law, then this obligation to be void ; otherwise to be and remain in full force and virtue.

....., (seal)

....., (seal)

Sealed and delivered in
the presence of

.....

.....

Oath of collector of school tax.

941.

.... County, ss :

I,, having been duly elected collector of the taxes of the..... of....., do swear (or affirm) that I will support the Constitution of the United States and the Constitution of the Commonwealth of Pennsylvania ; that I will well and truly collect and pay over, or account for, according to law, the whole amount of taxes charged and assessed in the duplicates which shall be delivered to me, and faithfully discharge the duties of said office according to law and the best of my judgment and ability.

Sworn (or affirmed) and subscribed, etc.

Warrant to collector of school tax.

942.

.....County,..... District, ss :

To ..Collector of..... school district in said county : These are to require you to collect and receive from persons assessed, the several sums in your duplicate respectively mentioned, and you shall complete and pay unto....., treasurer of said school district, on or before the..... day of..... next, all such sum or sums of money as you may then have collected, at which time the board of school directors will attend at their place of meeting in said district, and make an abatement of deficiencies, mistakes, or for indigent persons, etc. And if any person or persons shall neglect or refuse to make payment within thirty days after lawful demand made by you, it shall and may be lawful to and for you, and you are hereby commanded and required, to levy

the said tax by distress and sale of the goods and chattles of such delinquent, giving ten days' notice of such sale, by written or printed advertisements, rendering the overplus (if any be), to the owners. And in case goods and chattels cannot be found sufficient to satisfy the same, with cost of suits, then you shall take the body of every such person and bring him to the county jail, and deliver him to the sheriff or keeper of said jail, who shall detain and keep him in safe custody, without bail or main prize, until payment shall be made.

And you shall complete and pay into the said. the whole amount of your duplicate, except such deficiencies, etc., as shall have been allowed as aforesaid, on the day of next.

Given under my hand and seal the day of 19..

. , (seal)

President, Board School Directors
of District.

Countersigned :

. ,

Secretary of the Board.

Certificate by collector to county commissioners, of unpaid school tax on unseated lands.

943.

To the Commissioners of the county of :

Gentlemen : I do hereby certify that the following school tax on unseated lands within the district of

. . . . , was regularly assessed and set forth in the duplicate of school tax for the year 19.., delivered to me for collection by the president of the board of directors thereof, and that the same has not been paid to me by the owner thereof. You are therefore required to cause the same to be collected and paid over, agreeable to the thirty-fourth section of the act, entitled "An Act for the regulation and continuance of a system of education by common schools,"

passed May 8, 1854, and the eighth section of the supplement thereto, passed April 11, 1862, viz :

Upon lands of \$.....
Upon lands of..... \$.....

Collector of..... School Dis-
trict..... County.

August....19..

Certificate to prothonotary of unpaid balance due from collector.

944.

To the Prothonotary of the Court of Common Pleas of the county of..... :

I hereby certify that school tax for the current school year in the district of....., in said county, to the amount of (insert the amount in words) is due and unpaid by....., school tax collector of said district, at the date hereof, which you are required to enter against said and.....and.....who are his sureties, in accordance with the provisions of the thirteenth sections of the act, entitled " A further supplement to the Act, entitled ' An Act for the regulation and continuance of a system of education by common schools,' " etc., approved April 11, 1862.

Dated this.....day of.....19..

.....
President, Board School Directors
of.....District.

Attest :

.....
Secretary.

Petition for appointment of sanitary agent under act April 11, 1899, P. L. 38.

945.

To the Honorable, the Judges of the Court of Common Pleas in and for the county of....., Pennsylvania.

The petition of the directors of the school district of..... township, said county, respectfully represents :

That the school directors of the said township of.... have adopted rules and regulations to prevent the

introduction and spread of contagious or infectious diseases, etc., and having received information that there is an epidemic of small-pox in the said township, by reason whereof it will become necessary to regulate intercourse with such infected places, they desire to appoint a sanitary agent for the term of one year, at a compensation of two dollars per day for time actually employed as such agent.

Your petitioners therefore pray your Honorable Court to approve the reasons given by said board for the appointment of said sanitary agent, and also to approve of the compensation deemed proper therefor.

And they will ever pray.

President of.....School District.

Attest :
.....

SecretarySchool District.

.....county, ss. :

.....being duly affirmed according to law doth depose and say that the facts set forth in the foregoing petition are true and correct to the best of his knowledge and belief.

Affirmed and subscribed to before me this... day of , A. D. 19...

Decree.

946.

And now, to wit : the ... day of, A. D. 19..., the court having heard, read and considered the foregoing petition, and being satisfied with the propriety thereof, and the truth of the facts therein contained, do hereby approve the reasons given by the board of directors of the school district of.....township, said county, for the appointment of a sanitary agent, and also approve the compensation of two dollars per day deemed proper therefor. Said compensation to be paid out of the school fund of said township.

By the court :

President Judge.

Notice of convention of school directors for election of county superintendent.¹

947.

To the school directors of.....county :

Gentlemen :—In pursuance of the thirty-ninth section of the act of May 8, 1854, as amended by act March 27, 1866, P. L. 88, you are hereby notified to meet in convention, at the court house, in....., on the first Tuesday in May, 19.., being the.....day of the month, and select, viva voce, by a majority of the whole number of directors present, one person of literary and scientific acquirements, and of skill and experience in the art of teaching, as county superintendent, for the three succeeding years; and certify the result to the state superintendent, at Harrisburg, as required by the thirty-ninth and fortieth sections of said act.

.....
County Superintendent of.....county.

....., April....., 19..

Note 1. The above notice is to be inserted once a week for three successive weeks immediately preceding the first Tuesday in May, in not more than two newspapers of the proper county, if so many be published therein; if none are published in the county, a printed copy of the notice is to be sent by mail to the secretary of the board of directors of each school district.

Petition for removal of school directors. Act May 8, 1854, Sec. 9, P. L. 617. Act April 22, 1863, Sec. 9. See Chap. VII., Sec. 186.

948

In re Removal of School Directors of..... School District.

In the Court of Quarter Sessions of.....County, Pennsylvania. No.....,Term, 19..

To the Honorable....., President Judge of the said Court :

The petition of the undersigned, taxable citizens ofschool district respectfully represents :

That the members of the board of school directors of said school district, to wit:,,,, etc., have failed and neglected to organize as required by the Act of General Assembly of April 22, 1863,

Sec. 9, and have failed to organize up to the date of presenting this petition. That no treasurer has been chosen for the year, and the district is in danger of losing its state appropriation.

Wherefore your petitioners pray your Honorable Court to grant a rule upon the aforesaid members of board of school directors, requiring them to appear and show cause why their seats as school directors of the said school district shall not be declared vacant and other directors be appointed in their stead, as by law in such cases provided.

And they will ever pray, etc.

(Signed by six taxable citizens.)

State of Pennsylvania, County of, ss.:

Before me, a Notary Public, personally appeared (any three signers) above named who being duly sworn according to law, depose and saith that the above named are taxable citizens of township school district and that the facts above set forth are true.

Sworn and subscribed before me,
this day of, A. D., 19..

.

Notary Public.

Petition to appoint inspector of school accommodations. Act June 6, 1893, P. L. 330.

949.

To the Honorable the Judges of the Court of Common Pleas
of County :

The petition of the undersigned, resident taxable citizens of the township of, in the county aforesaid, respectfully represents: That the school house, situated in the extremity of said township, is unsuitable for the requirements of the public school kept therein, being in ruinous and unsafe condition, of insufficient seating capacity, and destitute of the ordinary conveniences necessary for the proper accommodations of the teachers and scholars. That the school directors of said township (naming them) wilfully refused and neglected, and are still refusing and neglecting, to provide a suitable, safe and convenient building for school purposes in said

.....district, though frequently requested by a number of the taxpayers of the township so to do. Your petitioners therefore pray the court to appoint a competent inspector to visit the said district, and inquire into the facts herein set forth, and report to the court, that such further order may be taken in the premises as is provided in such case by the act of assembly, approved the 6th day of June, 1893.

(To be signed by ten or more petitioners, at least six of whom must make affidavit thereto).

Petition for removal of school directors. Act May 8, 1854, Sec. 9, P. L. 617. See Chap. VII., Sec. 185.

950.

In re Removal of School Directors of.....Township.

In the Court of Quarter Sessions of.....County, Pennsylvania. No....,Sessions, 19..

To the Honorable....., President Judge of the said Court :

The petition of the undersigned taxable citizens ofschool district, respectfully sheweth,

That the members of the board of directors of the said school district, to wit,,,,,,, have during the last year refused and neglected, and are still refusing and neglecting to perform their duties as school directors of said school district in the following particulars :

To open and keep the schools of said district in operation as far as the means of the district will admit ; to provide and keep at the several school houses in said school district suitable and convenient water closets for both sexes, in the manner required by law ; to pay the teachers and janitors of the schools of said school district their salaries ; to provide fuel for suitably warming said school houses ; and to perform other duties enjoined upon them by law.

Wherefore your petitioners pray your Honorable Court to grant a rule upon the aforesaid members of said board of directors, requiring them to appear and show cause why their seats as school directors of the said school district

shall not be declared vacant and other directors be appointed in their stead, as by law in such cases provided.

And they will ever pray, etc.

(Signed by six taxable citizens.)

State of Pennsylvania, County of, ss.:

Before me, a Notary Public (or Justice of the Peace) (or Clerk of Court of Quarter Sessions) personally appeared (any three signers) that the above named are taxable citizens of township school district and that the facts above set forth are true, and further saith not.

Sworn and subscribed before me,

this day of, A. D., 19..

.

Notary Public.

Application for state normal diploma.

951.

No. 1.

., 19...

At a meeting of the board of school directors of school district, county, state of Pennsylvania, the following resolutions were adopted :

Resolved, That, whose address is P. O., county, Pennsylvania, having taught a common school in this district for annual school term . . ., since was graduated by the state normal school located at, county of, we take pleasure in saying, that we consider well qualified as a teacher, morally, intellectually and professionally.

Resolved, That we recommend the board of examiners and the faculty of the above named normal school, to grant said a state normal diploma.

By order of the board of directors.

., President.

Attest :

., Secretary.

No. 2.

IF THE APPLICANT HAS TAUGHT TWO TERMS FOR ONE BOARD IT IS NOT NECESSARY TO USE THIS FORM.

., 19...

At a meeting of the board of school directors of
 school district, county, state of Pennsylv-
 ania, it was

Resolved, That having taught a common
 school in this district for annual school term . . since
 graduation at the normal school above named, we cor-
 dially unite in the recommendation expressed in the pre-
 ceding resolutions.

By order of the board of directors.

., President.

Attest :

., Secretary.

., 19..

Knowing to be a successful teacher, and
 a person of good moral character, I heartily concur in the
 foregoing recommendation.

.,

Superintendent of Schools of county.

Form of practical teacher's state certificate.

952.

No. 1.

., 19..

At a meeting of the board of school directors of
 school district, county, state of Pennsylv-
 ania, the following resolutions were adopted :

Resolved, That, whose address is
 P. O., county, Pennsylvania, having taught
 a common school in this district for annual school
 term . . , we take pleasure in saying that we consider
 well qualified as a teacher, morally, intellectually and pro-
 fessionally.

Resolved, That we recommend the state board of ex-
 aminers and the faculty of the state normal school, located
 at, Pennsylvania, to grant above named person a
 teacher's certificate.

By order of the board.

., President.

Attest :

., Secretary.

No. 2.

....., 19..

At a meeting of the board of school directors of.....
school district,county, state of Pennsylv-
 ania, it was

Resolved, That.....having taught a common
 school in this district for.....annual school term.., we
 cordially unite in the recommendation expressed in the pre-
 ceding resolutions.

By order of the board.

....., President.

Attest :

....., Secretary.

No. 3.

....., 19..

At a meeting of the board of school directors of.....
school district,county, state of Pennsylv-
 ania, it was

Resolved, Thathaving taught a common
 school in this district for.....annual school term.., we cor-
 dially unite in the recommendation expressed in the pre-
 ceding resolutions.

By order of the board.

....., President.

Attest :

....., Secretary.

Knowing.....to be a successful teacher,
 and a person of good moral character, I concur in the fore-
 going recommendation.

.....,

Superintendent of Schools of.....county.

Note—If the applicant has taught for one board the three annual
 school terms required by law, Blank No. 1 should be filled up with the
 word three, and “term” be made to read “terms;” if he has taught
 for one board two terms, and for another one term, Blanks Nos. 1 and 2
 should be filled up accordingly; and the three forms above given are de-
 signed to be filled up only when the applicant has taught for three dif-
 ferent boards.

Lease of house and lot to school district.

953.

Know all men by these presents, that I,, of, for and in consideration of the payment of the sum of dollars per annum to me, my heirs, executors, administrators or assigns, by,, and, school directors of the district of, in the county aforesaid, do hereby rent and lease to the said school district, for the support and maintenance of the common schools of said district, according to law, all that certain house and lot, with the appurtenances, situate, etc., to have and to hold the same, for the purposes aforesaid, for and during the term and period of years next ensuing the date hereof, at the expiration of which the said premises are to be surrendered and delivered up to me, my heirs, executors, administrators or assigns, unless the present lease shall, in the meantime, be extended by me or them.

In witness whereof the said parties have hereunto set their hands and seals the day and year above written.

. (seal)
. (seal)

Witnesses :

.
.

Deed to school district.

954.

This indenture, made the day of, one thousand nine hundred and, between, of, state of Pennsylvania, of the first part, and "The School District of," county and state aforesaid, of the second part, witnesseth: That the said party hereto of the first part, for and in consideration of the sum of dollars to him in hand paid by the said party of the second part, at and before, etc , the receipt whereof, etc., has granted, bargained, sold, etc., and by these presents does grant, bargain, sell, etc., unto the said party of the second part, its successors and assigns, all that certain lot or piece of ground situate, etc. (describing premises and reciting title), together with all and singular, etc., and all

the estate, right, title, etc. To have and to hold the hereinbefore described premises, with the appurtenances, unto the said party of the second part, its successors and assigns, forever, for the establishment, support and maintenance of common schools in the said district, according to law. (Add warranty of title).

In witness whereof, the said party of the first part has hereunto set his hand and seal the day and year first above written.

..... (seal)

Signed, sealed and delivered
in the presence of

.....
.....

Bond of school district for damages for appropriation of lands.

955.

Know all men by these presents, that the
..... school district, a corporation duly organized in accordance with the laws of Pennsylvania, and
and are held and firmly bound unto
....., of county of
..... and state aforesaid, in the sum of three thousand dollars, lawful money of the United States, to be paid to the said or to his attorney, executors, administrators or assigns, to which payment well and truly to be made and done the said school district and the said and, bind themselves, their successors, heirs, executors, or administrators, firmly by these presents.

Sealed with their respective seals and dated the
..... day of, 19

Whereas the said is the owner in fee of a certain tract of land situate in the of
..... and state aforesaid, bounded on the north, etc. (describing premises) and containing acres, more or less ;

And whereas the Board of Controllers of the said
..... school district are about to enter upon, take and appropriate the said tract of land for the purpose of erecting

and building a public school house thereon, and are unable to agree with the said as to the sum to be paid for the purchase of said premises ; now, therefore, in order to secure the payment to the said of the amount which may be awarded to him as compensation for the taking and appropriating of the same for the purpose aforesaid, and the costs and damages by reason thereof, the condition of this obligation is such that if the said school district shall pay or cause to be paid to him, the said , his executors, administrators or assigns, the full sum which may be finally recovered by him against the said school district as compensation as aforesaid, according to law then this obligation to be void ; otherwise to be and remain in full force and virtue.

In witness whereof, the said school district and the said and have caused their respective seals to be affixed hereto the day and year above mentioned.

. (seal)

. (seal)

Sealed and delivered
in the presence of

.

.

Apprenticeship of child by public charitable institution. (Act May 25, 1878, P. L. 152.)

956.

This indenture, made the fourth day of 19 . . . , between the directors of the "Homeless Children of the," of the one part, and , of the township of County, Pennsylvania, of the other part, witnesseth : That the directors aforesaid do hereby, by virtue of the provisions of the Act of Assembly of this Commonwealth in such case made and provided, bind out and place with the said for the term of seven years next ensuing the date hereof , a minor child, now of the age of years, for four years last past an inmate of the said Home for Friend-

less Children, whose parents are unable to support him. During said term of service the said hereby engages to provide the said minor with suitable board, clothing, lodging and all other necessities, and to send him to the public schools of the said township at least four months of each succeeding winter season. The said is to serve the said at such employment as is suited to his years and ability in and about the business of farming upon the premises of his said employer, who hereby agrees to instruct and train him to a knowledge of said business in its several branches, as pursued in the neighborhood, and at the expiration of his period of service aforesaid to present him with a good, serviceable suit of clothing and the sum of forty dollars.

In witness whereof, the parties to these presents have hereunto set their hands and seals the day and year first above written.

The Home for Friendless Children of the

Attest: President, (seal)

. Secretary (seal)

Sealed and delivered

in the presence of

.

.

General form of complaint or information.

957.

. county, ss. :

., of the township of, in the county aforesaid, having been duly sworn (or affirmed), says that did, in the county aforesaid, on or about the day of, 19 . . ., cruelly ill-treat, abuse and punish one, a minor child, between . . . and . . . years of age, of deponent (stating circumstances), contrary to the act of assembly in such case made and provided (or, if the offense be one at common law, "against the peace and dignity of the Commonwealth of Pennsylvania").

Sworn (or affirmed) and subscribed before me this . . . day of, 19 . . .

.,
Justice of the Peace.

Physician's certificate of vaccination.

State board of health model forms.

958.

Form 10.

I hereby certify that on the . . . day, 19 . . . ,
 I vaccinated, age . . . , address, and
 that on the . . . day of, 19 . . . , I find a result-
 ing sore, which in my opinion means a successful vaccina-
 tion.

., M. D.

Address

Form 11.

I hereby certify that on the . . . day of, 19 . . .
 I examined a cicatrix on, age . . . , address . .
, and believe it to be the result of a successful
 vaccination.

., M. D.

Address

Form 12.

I hereby certify that on the . . . day of, 19 . . .
 I examined, age . . . , address,
 and found well defined cicatrices of small-pox.

., M. D.

Address

Teacher's attendance report.

959.

Mr., secretary or superintendent of schools
 or attendance officer,

.

In violation of the provisions of the act July 11, 1901,

the following children were absent without satisfactory excuse :

Name.	Age.	No. of Days.	Name of Parent or Guardian.

....., Teacher.

..... School.

Mailed or delivered this ... day of, 19...

Note—Print on the back of this report sections 1, 2, 5, 6 and 7 of act July 11, 1901.

See chapter on Compulsory Attendance.

Secretary's official notice of absence to parent or guardian.

960.

Mr.

By virtue of the provisions of an act of assembly providing for the attendance of children in the schools of this Commonwealth, and providing penalties for violation thereof, approved July 11, 1901, you are officially notified that has been absent during the present school term for a greater length of time than three days without lawful excuse.

Unless you send your child to school immediately, or show good reason for not doing so, you will become liable to the penalty imposed by law.

Served this ... day of, 19...

....., Secretary.

Note—Print on the back of the notice sections 1, 2, 4, 5, 6 and 7 of the act July 11, 1901.

See chapter on Compulsory Attendance.

Secretary's report to the principal or teacher.

961.

....., Pennsylvania, , 19...
 , teacher school, dis-
 trict, county, Pennsylvania. Beginning
 of school term

I hereby furnish you with a correct list of all the chil-

dren between the ages of six and sixteen reported to me by the assessor for your school.

Respectfully,

....., Secretary.

Name.	Age.	Sex.	Color.	Name of Parent or Guardian.

Note— It is suggested that the secretary have printed the sections 4, 5, 6 and 7 of the act July 11, 1901, to aid the principals and teachers in the enforcement of the said act.

See chapter on Compulsory Attendance.

Summons on parent or guardian.

962.

....., Pennsylvania, , 19...

Mr.,

Parent or guardian of

Dear Sir :—The act July 11, 1901, directs every parent, guardian or other person in this Commonwealth, having control or charge of a child or children between the ages of eight and sixteen years, to send such child or children to a day school in which the common English branches are taught. You are hereby notified that your son (or daughter) is not in attendance at a school. There will be a meeting of the school board of, county of, Pennsylvania, at the school house in said , on the day of, 19..., at ... o'clock ... M., when and where you may appear if you so desire, and present to said school board satisfactory evidence showing such child or children is or are prevented from attendance upon school or application to study by mental, physical or other urgent reason.

You are further notified that after service of this notice upon you, if the same child is absent from school three days, or their equivalent in time, during the remaining period or compulsory attendance, without excuse, as provided by law,

you will be liable to have imposed upon you the penalties as provided by the above named act.

By order of the board of directors.

....., President.

Attest :

....., Secretary.

Service of Summons.

963.

And now,, 19, service of the above notice was made upon, by reading and making known to him (or her) the contents thereof, and by handing to him (or her) a true and attested copy of the same.

.....

Petition to assess damages for a school house lot. Act April 9, 1867, P. L. 51.

964.

To the Honorable the Judges of the Court of Common Pleas of County, Pennsylvania :

The petition of the school district of the township of (or of the owners of the land), respectfully represents :

That the board of directors of said district have been unable to procure an eligible site for the erection of a school house as they have deemed expedient by agreement with owners of the land, and have on behalf of said district entered upon and occupied a certain piece of land, the property of, in said township of, which they have designed and marked off as follows (describe the land), and which contains, more or less, for the purpose of erecting thereon a school house, with its necessary and convenient appurtenances : The petitioners therefore pray the Court to appoint a jury of viewers, consisting of three discreet and disinterested citizens of said county, who shall not be owners of property or residents in said school district, and who, having been duly sworn or affirmed, faithfully, justly and impartially to decide and a true report to make concerning all matters and things submitted to them, and having viewed the premises, shall establish and determine the quantity and value of the land

so taken to be used for the purposes aforesaid, and after having made a fair and just computation of the advantages and disadvantages, shall estimate and determine whether any, and if any, what amount of damage has been or may be sustained, and to whom payable, and make report thereof to this Court.

And they will ever pray, etc.

....., President.

Attest :

....., Secretary.

(Affidavit of the trust of petition to be appended).

Note—It is not necessary that the report of viewers in proceedings under act April 9, 1867, P. L. 51, be signed by all the viewers, a majority being sufficient.

See School Sites, Sec. 303, 307.

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